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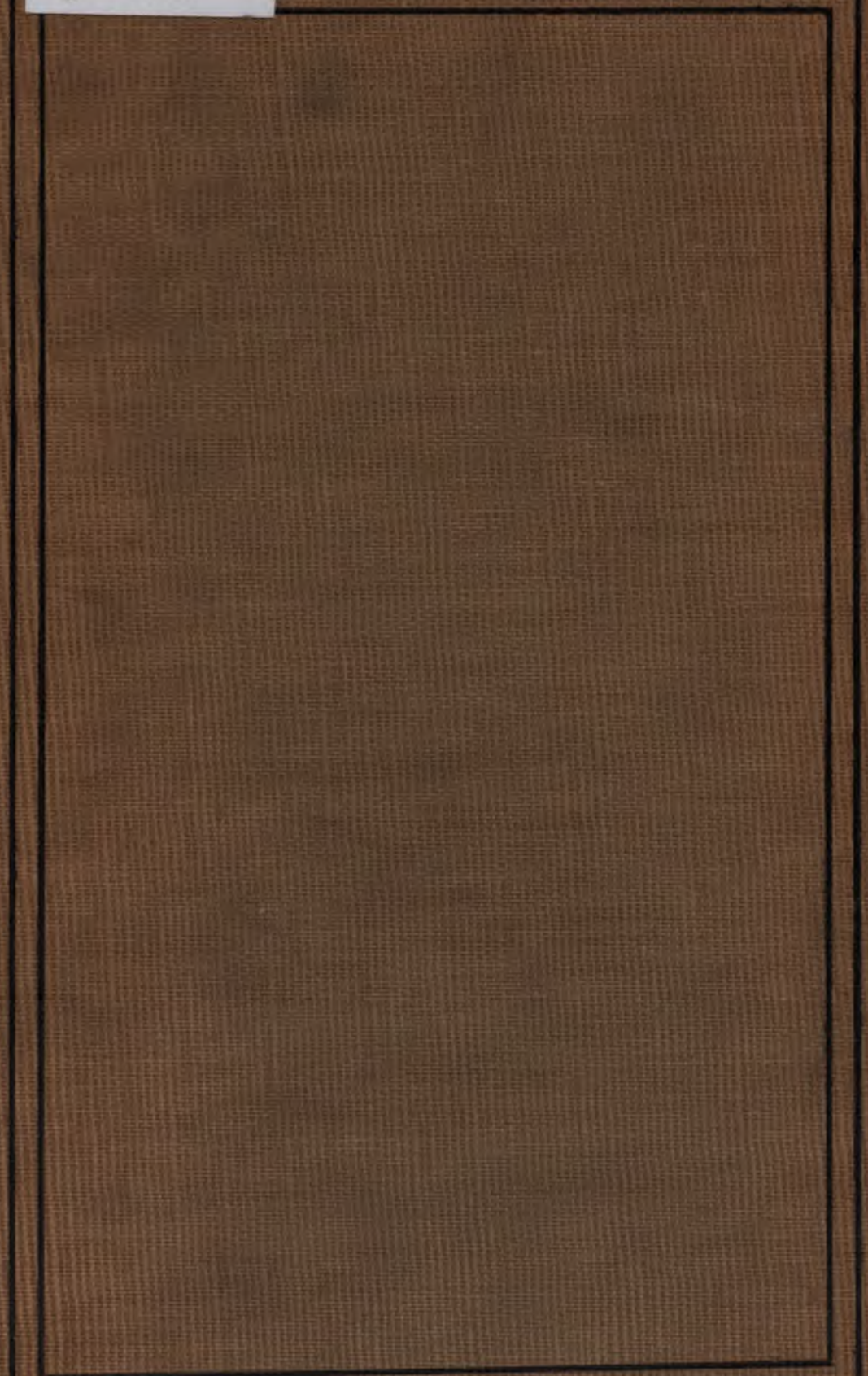
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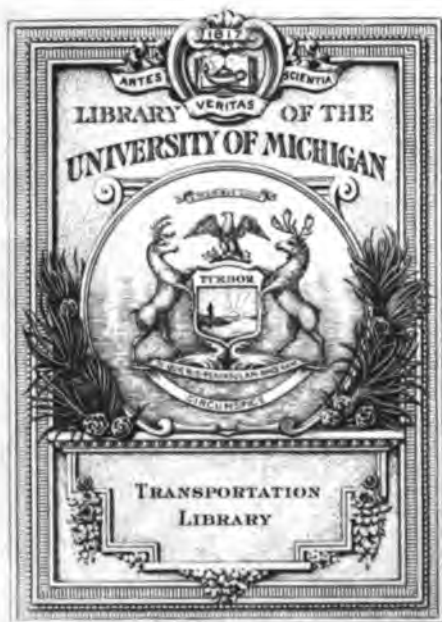
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**INTERSTATE COMMERCE COMMISSION REPORTS**

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**VOLUME 62**

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**DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES**

**MAY TO JULY, 1921**

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**REPORTED BY THE COMMISSION**

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**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1922**



## INTERSTATE COMMERCE COMMISSION.

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# INTERSTATE COMMERCE COMMISSION REPORTS.

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WYANDOTTE TERMINAL RAILROAD COMPANY.

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES  
OF RAILROAD SERVING INDUSTRIES.

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INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH  
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-  
CATION TERRITORY.

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*Submitted August 29, 1919. Decided May 18, 1921.*

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Wyandotte Terminal Railroad Company found not to be a common carrier  
subject to the interstate commerce act.

*R. T. Gray* for Wyandotte Terminal Railroad Company.

*William W. Collin, jr.*, for New York Central lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The portion of this proceeding now before us presents for consideration the question whether the Wyandotte Terminal Railroad Company, hereinafter called the Terminal, is a common carrier subject to the interstate commerce act, and whether it may lawfully receive compensation from its trunk line connections in the form of divisions of joint rates, absorptions of its switching charges, or in some other guise, out of through rates on interstate shipments to and from points on its line.

A questionnaire addressed to the Terminal on May 29, 1919, and its response thereto, giving additional information as to changes

since June 1, 1914, in physical properties, manner of operation, compensation received, and other pertinent matters, were made a part of the record with the consent of the Terminal and its trunk line connections. The New York Central Railroad Company in giving its consent noted its objection to the use of any basis other than the plant-facility cost in determining proper compensation for the Terminal.

The Terminal is a switching road operating on and near the property of the Michigan Alkali Company, hereinafter called the Alkali company, which has two plants on the Detroit River, No. 1 at Wyandotte, Mich., and No. 2 at the village of Ford, Mich., about 1.5 miles apart. The Terminal was organized September 14, 1904, under the general railroad laws of the state of Michigan with an authorized capital stock of \$10,000. Prior to 1902 the tracks within the plant of the Alkali company were owned partly by that company and partly by the Michigan Central Railroad Company and all switching in those plants was done by the trunk line. In 1902 the Alkali company purchased the Michigan Central's tracks within its plant and switched over them with its own power, although the trunk line continued to do part of the spotting for several years. When the Terminal began operations, it leased from the Alkali company all its tracks and equipment and from that time on spotted all cars.

The Terminal consists of two divisions, the Wyandotte and the Ford. The tracks of the Wyandotte division extend through the southern part of the city of Wyandotte, in an easterly and westerly direction, from the Detroit River to the main line of the Detroit, Toledo & Ironton Railroad and serve plant No. 1 of the Alkali company. Those of the Ford extend in an easterly and westerly direction in the village of Ford from the Detroit River to the main line of the same trunk line and serve plant No. 2. The two divisions are connected only by the trunk line rails. The Terminal owns 1.286 miles of main track and leases 20.478 miles of spur tracks and sidings from the Alkali company for an annual rental of \$1 "and other valuable considerations." Apparently the right of way upon which the owned tracks are laid is owned by the Alkali company and the J. B. Ford Company, an industry served by the Terminal as hereinafter appears. It also leases a short right of way in Ford from the J. B. Ford Company for an annual rental of \$1. The tracks leased are located in and around the plants and on the property of the Alkali company and the J. B. Ford Company in the city of Wyandotte and village of Ford.

The tracks of the Terminal are safe and practicable for operation by trunk line power but no such operation takes place. The service

performed by the Terminal for the industries served is the same as that which would be performed if the industries were served by the trunk lines direct.

The trunk line connections of the Terminal are the Michigan Central, the New York Central, the Detroit, Toledo & Ironton, and the Detroit & Toledo Shore Line, which have parallel tracks located about 1,500 feet from the plants of the Alkali company. Its equipment consists of seven locomotives leased from the Alkali company under the lease of the tracks.

The Terminal files tariffs and annual reports with us and keeps its accounts under our requirements. It publishes no rates for transportation of freight in less-than-carload quantities, and does no passenger, mail, or express business. No bills of lading are issued. Yardmasters report loaded cars switched from and to trunk lines, and invoices are rendered semimonthly to the trunk lines and industries for which switching service is performed.

The Terminal has no demurrage tariffs, demurrage charges being collected by the trunk lines direct from the industries served. There is no settlement for detention of cars as between the Terminal and its trunk line connections, and it is not a member of the American Railway Association. Three industries served by the Terminal have executed the average agreement with the trunk lines.

The Alkali company controls the Terminal through ownership of all shares of its capital stock except qualifying shares of directors. The officers of the Terminal also occupy official positions with the Alkali company and receive no compensation from the Terminal. The general character of the service performed by the Terminal is interchange switching between the industries served and connecting trunk lines. In addition to the controlling industry the Terminal serves the J. B. Ford Company and the Wyandotte Portland Cement Company, both of which are affiliated with the Alkali company and with the Terminal. Stockholders of the Alkali company own about 90 per cent of the stock of the J. B. Ford Company and about 20 per cent of the stock of the Wyandotte Portland Cement Company. J. B. Ford, president of the Terminal, is also president of the J. B. Ford Company and of the Wyandotte Portland Cement Company and is vice president of the Alkali company. The latter manufactures chemicals. The J. B. Ford Company manufactures soda ash and bicarbonate for the Alkali company. The Wyandotte Portland Cement Company purchases lime waste from the Alkali company and manufactures cement. The buildings and land used by the cement company are within the plant enclosure of the Alkali company and are leased from it. The Wyandotte Portland Cement Company is controlled by the Huron Portland Cement



Company which in turn is controlled by the interests that control the Alkali company and the Ford company. It will thus be seen that all industries served are affiliated with the Terminal.

At the time of the hearing in 1914 it was testified that the rental paid to the Alkali company varied from month to month, being based upon the earnings of the Terminal and not upon the value of the facilities leased to it. Operating expenses were paid, such working capital as was necessary was retained, and the balance was turned over to the Alkali company as rental. It was said on behalf of the Terminal:

We do not think it has been an unfair rental, but the fact that the Alkali company was the stockholder and that the question of what went to them as an expense by way of rental for those properties, or what went to them as dividends, we never considered of any special importance.

It does not clearly appear whether or not this practice still prevails.

A map introduced as an exhibit shows a team track from which eight cars were switched during the year 1918.

The following is an analysis of traffic and revenue for the year 1918:

	Cars.	Revenue.
<b>Interchange service:</b>		
Between plants of controlling industries and junctions with connecting carriers or other interchange points.....	30, 806	\$61, 894. 50
Between independent industries and junctions with connecting carriers or other interchange points <sup>1</sup> .....	3, 553	7, 106. 00
Between team track and junctions with connecting carriers.....	8	16. 00
Plant and interplant service; for controlling or affiliated industries.....	23, 819	54, 259. 50
Local switching; between plants of controlling or affiliated industries and other industries, team tracks, or stations.....	1, 963	4, 388. 00
Overhead switching; between trunk lines.....	46	92. 00
<b>Total.....</b>	<b>60, 196</b>	<b>127, 756. 00</b>

<sup>1</sup> These "independent industries" are, apparently, the J. B. Ford Company and the Wyandotte Portland Cement Company, but, as hereinbefore noted, these two industries are both affiliated with the controlling interests.

All interchange of cars takes place at the junction points and the average lengths of haul are: From the plant of the controlling industry to the interchange tracks of connecting carriers 0.984 mile; from "independent industries" 0.336 mile; and from the team track 0.363 mile, all on tracks of the Terminal.

To a question as to what portion of the Terminal's traffic is interstate or foreign commerce the answer is "None," but apparently this was made under misapprehension, as the record indicates that industries served ship their products to interstate destinations.

The Terminal's switching charge was originally \$2 per loaded car for all movements, but the charge since June 25, 1918, for certain of the switching movements has been increased by 25 per cent. Its switching tariff now provides for a charge of \$2 on all carload traffic

between points on its line and junctions with connecting carriers where there is a line-haul movement on another railroad. For switching loaded cars from junctions with connecting carriers at Wyandotte to points on the Terminal for movement within the Wyandotte switching district the charge is \$2.50, and this is also the charge for local plant and interplant switching. Beginning June 30, 1905, the connecting trunk lines paid an allowance of \$2 per car on all interchange switching performed by the Terminal, and also for any cars moved between trunk lines. This allowance was canceled by the trunk lines April 1, 1914, and no allowance was received by the Terminal from that time until May 1, 1916, when an allowance of \$1.30 was made and was in effect until August 1, 1916, at which time it was increased to \$2 per loaded car. This allowance has been received since that time.

The Terminal shows a book value of \$43,781.15, of which \$10,801.25 represents its investment in tracks and \$33,429.90 in material and supplies.

It is obviously a matter of considerable difficulty in many cases to determine whether an industrial railroad is a common carrier or merely a plant facility. In the present case the Terminal complies with many of the laws and regulations governing common carriers. But it does not necessarily follow that all roads complying with such laws and regulations become common carriers by virtue of such compliance alone, although it may be not without significance. For instance, incorporation is not a necessary incident to a common carrier status under the interstate commerce act and, conversely, the mere fact of incorporation can not transform a plant facility into a common carrier. The record does not show that the Terminal is recognized as a common carrier by the state courts and commission or by the connecting trunk lines; or that it has, or has exercised, the power of eminent domain. While the extent to which the public uses the facilities of a railroad is not controlling, there must be some appreciable use of the road by the public or else the holding out to carry for all is merely an empty form. It is not shown that the public has access to the so-called team track, that the eight cars switched during 1918 between the team track and junctions with connecting carriers were for the public, or moved in interstate or foreign commerce, or that any carriage is performed other than for the controlling and affiliated industries.

We are of opinion and find upon this record that the Terminal is not a common carrier subject to the interstate commerce act.

This is not to say that it is unlawful for the trunk lines to pay reasonable compensation to the Terminal for performing as their agent, or a reasonable allowance to the Alkali company under sec-

tion 15 of the interstate commerce act for performing through its industrial railroad, any portion of the service customarily included in the interstate line-haul rates in this locality which they do not elect to do for themselves.

The Terminal seeks to have the present allowance of \$2 per car for services performed in connection with interchange traffic increased to \$3.50 per loaded car, and asks for further hearing if this is not done. In support of this contention it submits cost data purporting to show that the cost per loaded car has increased from \$1.441 in 1914 to \$2.747 in 1918, on the basis of the 60,195 cars shown in the analysis of traffic, *supra*. Apparently there is no separation of interstate and intrastate commerce and no segregation or allocation of expenses as between the different kinds of service, the assumption being that the cost per car is the same for each. It is sufficient to state that, aside from the fact that the record would not justify us in approving an increase in compensation for the services performed to \$3.50 per car, the issues in this proceeding are not such as to enable us to prescribe maximum rates to and from the various plants reached by the Terminal; and that under *Atchison Railway Co. v. United States*, 232 U. S., 199, 214, "Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish."

The trunk lines will be expected to file with us a full and specific statement of any arrangements entered into immediately upon their adoption.

No order is necessary.

62 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1299.

FIG IRON FROM SOUTHEASTERN POINTS TO UTAH.

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*Submitted March 30, 1921. Decided May 31, 1921.*

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Proposed increased rates on pig iron from southeastern points to Utah common points found not justified. Suspended schedules ordered canceled.

*J. T. Hammond, jr.*, for respondents.

*M. H. Love* and *H. W. Prickett* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3.

By schedules filed to become effective February 20, 1921, respondents propose to increase the rates on pig iron from producing points in certain southern states, particularly Alabama and Tennessee, to Utah common points. Upon protest filed on behalf of foundries and manufacturers of iron articles in Utah the schedules were suspended until July 20, 1921. Rates are stated in amounts per long ton unless otherwise noted.

The proposed rates are for the most part group rates, and Birmingham, Ala., and Salt Lake City, Utah, will be taken as representative points of origin and destination. For a number of years prior to March 1, 1916, it was the practice of the carriers to publish the lowest combinations based on a Mississippi River crossing or other rate-breaking point as joint rates from Birmingham and other points of origin to Utah common points. This method of constructing rates was abandoned on that date, when, in compliance with fourth section order No. 124 as amended by order of April 30, 1915, the rate from Birmingham was reduced from \$12.08 to \$11, the rate then in effect from Birmingham to Spokane, Wash. The \$11 rate to Spokane was canceled March 15, 1918, and a rate of 60 cents per 100 pounds, equivalent to \$18.44 per long ton became effective. On June 25, 1918, following general order No. 28 of the Director General of Railroads, this rate was increased to 75 cents per 100 pounds, equivalent to \$16.80 per long ton, and on August 26, 1920, further increased under our authority of July 29, 1920, to \$1 per 100 pounds, equivalent to

\$22.40 per long ton. The \$11 rate to Salt Lake City was increased to \$13.80 on June 25, 1918, and to \$18.40 on August 26, 1920. Respondents propose to increase the latter rate to \$19.955.

In justification of the proposed rates respondents' witness testifies that it is desired to restore the former method of publishing the lowest combinations as joint rates. They compare the net ton-mile earnings of 9.24 mills under the proposed rate from Birmingham to Salt Lake City, 1,928 miles, with those under the rate of \$1 per 100 pounds now in effect from Birmingham to Spokane, Butte, Mont., Portland, Oreg., Phoenix, Ariz., and San Francisco and Los Angeles, Calif., ranging from 7.47 mills to Portland, 2,676 miles, to 10.53 mills to Phoenix, 1,899 miles. There is no evidence of movement from Birmingham at the \$1 rate.

Protestants compete with manufacturers located in the middle west, Spokane, and Pacific coast points. They purchase pig iron mostly from the Birmingham district. The volume of their shipments has declined in the past few years, due, they assert, to increases in the rates, and the use, in consequence, of scrap iron purchased locally. They stress the fact that Spokane enjoys rates of \$13.335 from Duluth and \$18.37 from Memphis, in which certain of the respondents participate. The short-line distance from Duluth to Spokane is 1,465 miles; from Memphis, 2,138 miles. The net ton-mile earnings under the rates from these points to Spokane are 8.12 and 7.67 mills, respectively. The present rate from Birmingham to Salt Lake City yields 8.52 mills per net ton-mile.

We find that respondents have not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1302.  
IRON OR STEEL BOLTS, LESS THAN CARLOAD, FROM  
KANSAS CITY, MO., TO TEXAS POINTS.

---

*Submitted March 12, 1921. Decided May 31, 1921.*

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Proposed increased rates on iron or steel bolts, in less than carloads, from Kansas City, Mo., to Galveston and Beaumont, Tex., and points taking the same rates, with certain exceptions, found not justified. Respondents required to cancel suspended schedules without prejudice to filing new schedules in accordance with the findings.

*R. D. Williams* for respondents.

*J. H. Tedrow* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

By schedules filed to become effective February 25, 1921, respondents propose to increase to \$1.595 their present less-than-carload commodity rate of \$1.405 applicable on iron or steel bolts from Kansas City, Mo., to Galveston and Beaumont, Tex., and points taking the same rates. Upon protest of the Chamber of Commerce of Kansas City, in behalf of the Kansas City Bolt & Nut Company, hereinafter termed protestant, the schedules were suspended until July 25, 1921. Rates are stated in amounts per 100 pounds.

Prior to December 31, 1919, the joint fourth-class rate of \$1.20, governed by western classification, was applicable and the New Orleans combination was \$1.04, composed of commodity rates of 46.5 cents to New Orleans and 57.5 beyond. On that date a joint commodity rate of \$1.04 was established. This rate was increased to \$1.405 in the general increase authorized by us on July 29, 1920. On September 21, 1920, the commodity rate beyond New Orleans was canceled, thereby making applicable fourth-class rates of 96.5 and 93 cents from New Orleans to Galveston and Beaumont, respectively. The proposed rate of \$1.595 is based upon the present commodity rate of 63 cents to New Orleans and the fourth-class rate of 96.5 cents to Galveston. It is higher than the present combination to Beaumont. By tariffs now under suspension in Investigation and Suspension Docket No. 1303, it is proposed to cancel the commodity rate from Kansas City to New Orleans, thereby making applicable the fourth-class rate of \$1.485. The resulting combination

would be \$2.45. The joint fourth-class rate from Kansas City to Galveston is \$1.62, and it is this rate which respondents desire to eventually make applicable.

In 1920, protestant, said to be the only manufacturer of iron and steel articles located on the Missouri River, shipped to Texas 1,783 tons in carloads and 719 tons in less than carloads, or 17.4 per cent of its total tonnage. It is estimated that about 150 tons of the less-than-carload shipments were destined to points in the Galveston group, and approximately 100 tons to intermediate points in Texas. Dallas and Fort Worth, Tex., are intermediate and take the fourth-class rate of \$1.505 from Kansas City, 10 cents higher than the present rate to Galveston. The proposed rate would eliminate this fourth section departure. The fourth-class rate of \$1.62 applicable to Texas common-point territory, is the same as the fourth-class rate to Galveston. The commodity rate from St. Louis to Galveston is \$1.465, or 13 cents lower than the proposed rate from Kansas City. Kansas City is intermediate between St. Louis and Galveston and Beaumont over certain circuitous routes, but not over the direct route. The fourth-class rate to Galveston from St. Louis is \$1.62, the same as from Kansas City.

The following comparison between rates from Kansas City and those from competing points of origin was submitted by protestant:

From—	To Galveston.			To Beaumont.		
	Distance.	Rate.	Per ton-mile.	Distance.	Rate.	Per ton-mile.
Kansas City, Mo.:	<i>Miles.</i>		<i>Miles.</i>	<i>Miles.</i>		<i>Miles.</i>
Present rate.....	849	\$1.405	33.1	789	\$1.405	36.5
Proposed rate.....	849	1.595	37.5	789	1.595	41.5
St. Louis, Mo.....	856	1.465	34.2	775	1.43	36.9
Chicago, Ill.....	1,140	1.55	27.2	1,059	1.515	28.6
Pittsburgh, Pa.....	1,417	1.60	22.7	1,376	1.565	22.8
Birmingham, Ala.....	764	1.085	28.8	633	1.085	34.3
Chattanooga, Tenn.....	807	1.135	25.3	776	1.135	29.1

Joint commodity rates from the above competing points to Galveston were originally established on the basis of the New Orleans combinations. Changes have occurred in the components of these combinations, but certain of the joint rates have not been corrected to reflect such changes. The joint rates from Pittsburgh, Birmingham, and Chattanooga were increased 33½ per cent and those from St. Louis and Chicago 85 per cent, following *Increased Rates, 1920*, 58 I. C. C., 220, whereas the rates to New Orleans were increased 25 per cent from Birmingham and Chattanooga, and 33½ per cent from points in the eastern group, and the rates beyond New Orleans were increased 85 per cent. In *Substitution for Increases in Rates*, 61 I. C. C., 518, where a somewhat similar situation was presented,

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we authorized the establishment of joint rates on the basis of present combinations. The present combinations from Birmingham and Chattanooga to Galveston are \$1.265 and \$1.81, composed of commodity rates of 30 and 34.5 cents, respectively, to New Orleans, and the fourth-class rate of 96.5 cents beyond. As above indicated the present joint commodity rates are \$1.085 and \$1.185, respectively. The rates from Pittsburgh and St. Louis have been revised to the present combinations, composed of commodity rates of 68.5 and 50 cents, respectively, to New Orleans and the fourth-class rate of 96.5 cents beyond. By tariffs now under suspension in Investigation and Suspension Docket No. 1803, it is proposed to cancel the commodity rate from St. Louis to New Orleans, thereby making applicable the fifth-class rate of 98 cents, governed by southern classification. The resulting combination would be \$1.945, or 32.5 cents higher than the joint fourth-class rate of \$1.62, which would become applicable.

The present rate situation is more or less chaotic. Less-than-carload commodity rates apply from Birmingham and Chattanooga to both New Orleans and Galveston, while class rates are applicable from New Orleans to Galveston. In another proceeding, it is proposed to cancel the commodity rates in effect from St. Louis and Kansas City to New Orleans. It is respondents' purpose to eventually cancel commodity rates from Kansas City to Galveston and make applicable the class rate. In the present proceeding it is proposed to observe the New Orleans combination to Galveston, but not to Beaumont. The New Orleans combination has been departed from with respect to shipments from Birmingham and Chattanooga, but adhered to from Pittsburgh and St. Louis. As a result of our decisions in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, 541, and in *Natches Chamber of Commerce v. L. & A. Ry. Co.*, 58 I. C. C., 610, 620, practically all less-than-carload commodity rates in Arkansas and Louisiana and throughout the southwest generally have been canceled.

We find that respondents have not justified the proposed rates which are in excess of the New Orleans combinations and in excess of the rates contemporaneously in effect from St. Louis through Kansas City to the same destinations, but that the proposed rates have been justified to the extent that they are not in excess of the New Orleans combinations and the rates contemporaneously in effect from St. Louis through Kansas City to the same destinations.

An order will be entered requiring the cancellation of the suspended schedules, but respondents may, upon not less than five days' notice, establish rates not in excess of those herein found justified.



No. 11343.

## ODELL-DALY MATERIAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA  
& SANTA FE RAILWAY COMPANY, ET AL

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Submitted December 8, 1920. Decided May 20, 1921.

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Rate on glass sand, in carloads, from Guion, Ark., to Augusta, Kans., found unreasonable. Reparation awarded.

*E. N. Adams* for complainant.

*James M. Chaney* and *M. G. Roberts* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

## BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached a conclusion differing somewhat from that recommended by him.

Complainant, a corporation engaged in the sand business with a sand pit at Guion, Ark., alleges that the rates charged by defendants on 19 carloads of glass sand shipped in July, August, and September, 1919, from Guion to Augusta, Kans., were unreasonable and unjustly discriminatory to the extent that they exceeded 10 cents. We are asked to award reparation and to establish reasonable and nondiscriminatory rates for the future. Rates are stated in cents per 100 pounds, and do not include the general increases of 1920.

Seventeen of the shipments moved over the Missouri Pacific to Aurora, Mo., and beyond over the St. Louis-San Francisco, hereinafter called the Frisco, 392 miles. The remaining two shipments moved over the Missouri Pacific to Pittsburg, Kans., and thence over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, 431 miles. Charges were collected on the Frisco shipments at a rate of 26.5 cents, the basis for which is not shown; and on the two Santa Fe shipments at the aggregate of the intermediate rates, 9 cents to Pittsburg and 8.5 cents beyond. A joint class-E rate of 28 cents governed by the western classification was applicable on all of the shipments and therefore undercharges are outstanding. Contemporaneously the aggregate of the intermediate rates, Frisco delivery, was 13 cents, 7 cents to Aurora and 6 cents beyond. These departures

from the provisions of the fourth section of the interstate commerce act were not protected by appropriate applications or otherwise, and were unlawful.

In May, 1919, complainant asked defendants to establish a rate of 11.5 cents. This was established on December 31, 1919, over the routes of movement and the fourth section violation was thereby removed. The same rate was contemporaneously applicable from Guion to Blackwell, Okla., 486 miles.

Guion is a local station on the White River division of the Missouri Pacific, 177 miles southeast of Aurora. Defendants' witness testified that traffic is light on this division and, because of the many tunnels, trestles, grades, and curves through the Ozark Mountains, train operation is more expensive than over other parts of the Missouri Pacific system.

The average weight of the shipments was 77,658 pounds. The applicable rate of 28 cents would yield \$217.44 per car, with car-mile earnings on the Frisco shipments of 55.5 cents and on the Santa Fe shipments 50.5 cents. A rate of 13 cents would produce \$100.96 per car, and car-mile earnings of 25.8 and 23.4 cents, respectively. In *Odell-Daly Material Co. v. Director General*, 60 I. C. C., 737, we found reasonable a rate on silica sand, in carloads, of 11 cents from Guion to Sapulpa, Okla., 344 miles. That rate yielded \$86.28 per car and about 25.1 cents per car-mile.

We find that the applicable rate was unreasonable to the extent that it exceeded 13 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11854.

## PRODUCERS REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, GULF, COLORADO &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted May 13, 1921. Decided May 27, 1921.*

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Rates on gasoline, in carloads, from Gainesville, Tex., to Kassel, Avondale, and Westwego, La., for export, found not unreasonable. Complainant not shown to have been damaged by the undue prejudice alleged. Complaint dismissed.

*A. C. Holmes* and *Warren T. Spies* for complainant.

*T. J. Norton*, *H. L. McCracken*, and *F. E. Andrews* for defendants.

*John F. Finerty* for Director General, as Agent.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*DANIELS, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner; exceptions were filed by complainant; and the parties have been heard in oral argument.

Complainant, a corporation engaged in refining crude petroleum at Gainesville, Tex., alleges that the domestic rates charged on numerous carload shipments of gasoline between September 28 and October 21, 1918, from Gainesville to Kassel, Avondale, and Westwego, La., for export, were unreasonable and unduly prejudicial in comparison with the contemporaneous export rates from Oklahoma refining points. Reparation only is asked. Rates will be stated in cents per 100 pounds and, unless otherwise specified, are the rates in effect when the shipments moved.

Gainesville is located on the Gulf, Colorado & Santa Fe, 65 miles north of Fort Worth, Tex. Westwego and Avondale are on the Texas & Pacific, 8 and 11 miles, respectively, west of New Orleans, La., and Kassel is on the line of the Louisiana Railway & Navigation Company, 21 miles northwest of New Orleans. Eighty carloads of gasoline were transported to Kassel via the Gulf, Colorado & Santa Fe to Fort Worth, the Texas & Pacific to Shreveport, La., and Louisiana Railway & Navigation Company beyond, a total distance of 592 miles. Sixteen carloads moved to Westwego and one to Avondale via the Gulf, Colorado & Santa Fe to Fort Worth and

Texas & Pacific beyond, 586 and 583 miles, respectively. The shipments averaged 53,000 pounds and were exported.

Prior to June 25, 1918, the export rate from Gainesville as well as from Oklahoma and Kansas points was 20 cents, which parity had been maintained for several years. On that date, under authority of general order No. 28 of the Director General of Railroads, export rates were canceled from Gainesville and the domestic rate, increased 25 per cent, became applicable on both domestic and export shipments. From Oklahoma and Kansas points, however, the export rates, increased 25 per cent, were allowed to remain in effect. When the specific increase of 4.5 cents was substituted for the percentage increase on petroleum and petroleum products, the resulting rates, effective August 1, 1918, from Gainesville, were 34.5 cents to Kassel and 37.5 cents to Avondale and Westwego. The contemporaneous export rate from Oklahoma points was 24.5 cents. Subsequently an export rate of 24.5 cents was established from Gainesville to New Orleans rate points, and complainant asks reparation to that basis. The present export rate is 33 cents and is satisfactory to complainant. The majority of the shipments to Westwego were undercharged, as charges were collected at 34.5 cents. The route of movement traversed by the shipments to Kassel was not specifically provided in the tariff carrying the joint through rate charged to that destination but the joint through rate was made applicable over the route of movement by appropriate tariff provision if for the convenience of the carriers parties to the tariff that route was selected. No question is raised as to the application of the rate charged to Kassel.

On behalf of complainant it is testified that, prior to June 25, 1918, it, in common with other refiners, obligated itself to supply a certain portion of its production of gasoline for export for war purposes. The gasoline was to be shipped at Cushing, Okla., rates, in accordance with trade custom. When demand was made for the gasoline complainant learned that its export rate had been canceled and, a few days before it was necessary to begin shipments, requested its reinstatement. In accordance with freight-rate authority issued by the United States Railroad Administration on October 7, 1918, the preexisting export rate, increased by the amount of the specific increase in oil rates, was published effective October 24, 1918.

Complainant contends that the disturbance of the long-existing relation of the Gainesville rate to the rates from Oklahoma points was the result of a tariff misunderstanding; that defendants admitted the unreasonableness of applying domestic rates from Oklahoma and Kansas points by allowing the export rate to remain in effect from those points, and that the exaction of domestic rates on export gasoline from Gainesville, an intermediate point, involving a much

shorter haul, was unreasonable and unduly prejudicial. One export shipment is shown to have moved from Oklahoma City, Okla., through Gainesville to Westwego for export at the 24.5-cent rate during the period in question, although several other routes were considerably shorter than through Gainesville. Complainant also relies upon the fact that defendants immediately after the discrepancy was called to their attention took steps to restore the previous equality.

It is testified for defendants that the need of additional revenue justified the cancellation of export and import rates; that export and import rates from and to Texas points generally were canceled; that the cancellation of the Texas export rates and the retention of the Oklahoma export rates were in strict conformity with the instructions of the Railroad Administration; that the export rate in effect from Gainesville prior to June 25, 1918, was not fixed in relation to rates from Oklahoma points but rather to rates from other Texas points, and that these latter rates, as well as rates from Oklahoma, were depressed by rates to New Orleans from refining points east of the Mississippi River and also influenced by certain pipe-line competition from southern Texas. It is said that the disturbance of relationships in rates by the general increase was rectified as soon as possible under the existing abnormal conditions, and export rates were reinstated when conditions demanded. New conditions are said also to have influenced the republication of export rates from north Texas points, including Gainesville, on the basis of low rates applying from certain Texas refineries on both domestic and export traffic.

Defendants show that the rate of 34.5 cents from Gainesville to New Orleans rate points did not compare unfavorably with contemporaneous rates from Wichita Falls and other Texas points from which the export rates had been canceled. They further show that this rate is equal to 40 per cent of the fifth-class rate and cite numerous commodity rates on gasoline, in some instances applying on export as well as domestic traffic, ranging from 40 to 83 per cent of the fifth-class rates in effect in this general territory. Certain of our decisions are cited in which domestic rates equal to or exceeding the rates here attacked were prescribed for comparable hauls in this territory. As previously stated, prior to June 25, 1918, the export rate from Gainesville to Texas Gulf ports was 20 cents, whereas a domestic rate of 28 cents had been prescribed from and to those points in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312.

The rate of 34.5 cents via the short-line distance of 561 miles from Gainesville to New Orleans would yield ton-mile earnings of 12.3 mills, and based on an average weight of 53,000 pounds, car-mile earnings of 32.59 cents. The export rate requested would yield

ton-mile earnings of 8.73 mills and car-mile earnings of 23.14 cents. Numerous domestic rates approved by us, yielding ton-mile earnings of from 9.8 to 19.3 mills and car-mile earnings ranging from 26 to 51 cents for hauls varying from 150 to 806 miles, are shown.

The record discloses that the export rates from Oklahoma were depressed by competition. The fact that the rate attacked was subsequently reduced to this depressed basis does not warrant an award of reparation. The complainant does not question the propriety of the rates as applied to domestic shipments.

It does not appear that gasoline shipped from Oklahoma or Kansas fixed the price of export gasoline at the points of destination, or in any way controlled the market at those points; or, assuming that the Oklahoma and Kansas export rate was unduly prejudicial to complainant, it is not in evidence that the undue advantage of shippers from Oklahoma or Kansas was the proximate cause of any loss, damage, or injury to complainant in depressing its price or depriving it of a market. The fact that complainant would have fared better, had it enjoyed a similar export rate, does not prove damage when the rate it paid is not shown to be unreasonable.

We find that the rates assailed were not unreasonable and that complainant was not damaged by the undue prejudice alleged. The complaint will be dismissed.

No. 11371.

EMERSON-BRANTINGHAM COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted January 21, 1921. Decided May 20, 1921.*

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1. Rates on refined petroleum oils, in tank-car loads, from points in Kansas and Oklahoma to Rockford, Ill., found not unreasonable or unduly prejudicial.
2. Rates on crude, fuel, and gas oils, in tank-car loads, from and to the same points, found unreasonable. Reparation awarded and reasonable maximum rate prescribed for the future.

*C. S. Bather* for complainants and interveners.*T. J. Norton* and *F. E. Andrews* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

## BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainants are corporations dealing in or using petroleum and its products at Rockford, Ill. By complaint filed April 5, 1920, they allege that the rates applied by defendants on petroleum and its products in tank-car loads from Kansas and Oklahoma producing points in groups 2 and 3 to Rockford were and are unreasonable and unduly prejudicial. We are asked to establish reasonable and non-prejudicial rates and to award reparation on shipments made within the statutory period. Two other receivers of these commodities at Rockford intervened in complainants' behalf. Rates will be stated in cents per 100 pounds as of July 6, 1920, date of the hearing, unless otherwise noted.

Some of the complainants are dealers in petroleum and its products, which they refine and ship in less than carloads to stations within 100 miles of Rockford. They also distribute kerosene and gasoline by tank wagons to less distant points. Other complainants manufacture agricultural implements, gas stoves, pumps, or other products, and use fuel oil at their plants. All of them have com-

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petitors at various near-by places, particularly Chicago, Ill., and Milwaukee, Wis. In distributing their respective products complainants often must take this competition into account. It is said by way of illustration that the price of gasoline at Rockford and neighboring points is fixed by a competitor at Whiting, Ind., in the Chicago district, which receives crude oil by pipe line from Kansas and Oklahoma fields and ships the product by rail to Rockford and vicinity at lower through charges than the direct all-rail rate to Rockford, and that complainants must necessarily meet the price so fixed. They assert that such competition restricts their sales in territory naturally tributary to Rockford and in many cases forces them to absorb differences resulting from the disadvantage in transportation costs.

Prior to June 25, 1918, the rate on refined and fuel oils to Rockford from group-2 points, which will be taken as representative, was 27 cents. On that date the rate was increased 25 per cent under general order No. 28 of the Director General of Railroads and became 34 cents. The latter rate was reduced to 31.5 cents on July 25, 1918, and on June 3, 1920, the rate on fuel oil was made 1 cent lower than on refined oil or 30.5 cents. These rates as increased under the general increase of 1920 are still in effect. As a general rule, rates on crude, fuel, and gas oils from the midcontinent field are 5 cents lower than on refined oils, following *Midcontinent Oil Rates*, 36 I. C. C., 109.

Complainants contend that Rockford should be accorded the same rates as Chicago, 29.5 cents on refined oils and 24.5 cents on the heavier oils of lower grade. The distances to Rockford average about the same as to Chicago, approximately 600 miles from the Kansas field and 700 miles from the Oklahoma field. From Kansas City, Mo., the rates on petroleum and its products are the same to both points. On classes and commodities generally Rockford is accorded the same rates to and from the west and southwest as Chicago. In *Kansas City Refining Co. v. Director General*, 57 I. C. C., 197, we prescribed a minimum differential in the rates on fuel oil to Chicago from Kansas City of 5 cents lower than the rates on refined oil and 3 cents lower than the rates on fuel oil from the midcontinent field. The rates to Chicago in effect prior to June 25, 1918, were those found reasonable in *Midcontinent Oil Rates*, *supra*; but these were group rates, the average distance to the group from the midcontinent field being materially less than to Chicago. Rockford is about 85 miles northwest of Chicago. It is served by the Chicago, Milwaukee & St. Paul, the Chicago & North Western, the Chicago, Burlington & Quincy, the Illinois Central, and the Chicago, Milwaukee & Gary. The lines of the Atchison,



Topeka & Santa Fe to Kansas City and of the Chicago, Milwaukee & St. Paul beyond constitute the shortest route from the Kansas and Oklahoma fields to Rockford, and most of the traffic moves over those lines. Rockford is reached by a branch line of the Chicago, Milwaukee & St. Paul extending north from Davis Junction, Ill., which is intermediate to Chicago and 12 miles from Rockford. The other lines mentioned participate in the traffic, but their routes are more circuitous. Rockford is intermediate to Chicago via Omaha, Nebr., and the Illinois Central, but this route is perhaps 35 to 40 per cent longer than the direct route through Kansas City.

The rate of 31.5 cents to Rockford also applies to other points in Illinois south of the Wisconsin state line, west of Lake Michigan, north of the lines from Chicago through Mendota and Dixon to Fulton, Ill., and east of the Mississippi River.

Defendants point out that there are two single-line routes from the producing points to Chicago, while shipments to Rockford must move over two or more roads, and also that Rockford is not reached by the main lines of the carriers operating direct routes between Chicago and the southwest. They maintain that rates to Chicago are lower than to Rockford because of competition among the rail carriers and with pipe lines. It is their policy to maintain rates to Chicago which will lessen the disadvantage of refineries at that point not served by pipe lines in competing with refineries at Whiting having pipe-line service. They suggest that any substantial increase in the rates to Chicago might curtail shipments and contend that dissimilarity of circumstances and conditions justifies lower rates to Chicago than to Rockford.

Other evidence bearing upon the reasonableness of the rates has been considered but need not be detailed.

In *Wadhams Oil Co. v. Director General*, 57 I. C. C., 597, we prescribed rates from these producing points to Milwaukee and Racine, Wis., not more than 3 cents higher than those contemporaneously in effect to Chicago. Defendants contend that Rockford is properly a Milwaukee rate point and are willing to readjust their rates accordingly. This would result in an increase of 1 cent in the rates on refined oil and a decrease of 3 cents in the rates on the heavier lower-grade oils. The distance to Milwaukee is about 75 miles greater than to Chicago and Rockford.

In *Lake Park Refining Co. v. Director General*, 60 I. C. C., 381, we found that a rate of 25 cents on petroleum fuel oil in tank-car loads from Ponca City, Okla., to Hutchinson Station, Ill., a point within the switching district of Chicago, was not unreasonable on shipments made during February and March, 1918. At that time the rate on refined oil to Hutchinson Station was the same as on

fuel oil. The subsequently established rate on fuel oil to Chicago, effective July 25, 1918, was 24.5 cents, and this we prescribed to Hutchinson Station as reasonable for the future, subject to the general increase of 1920. We also cited with approval *Atlantic Refining Co. v. Director General*, 58 I. C. C., 46, in which we declined to award reparation based on the general readjustment of July 25, 1918, wherein the former increase of 25 per cent was replaced by a uniform specific increase of 4.5 cents in rates on oil.

We find that the rates assailed on refined petroleum oils were not and are not unreasonable or unduly prejudicial; that the rates assailed on crude, fuel, and gas oils were unreasonable to the extent that they exceeded 22 cents per 100 pounds prior to January 1, 1918, 26.5 cents from January 1, 1918, until August 25, 1920, and since that date have been, are, and for the future will be, unreasonable to the extent of their excess over 26.5 cents, subject to the increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

We further find that shipments were made as described between February 5, 1916, and July 6, 1920; that complainants paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

No. 11513.<sup>1</sup>

NEVADA CONSOLIDATED COPPER COMPANY  
v.  
BINGHAM & GARFIELD RAILWAY COMPANY, DIRECTOR  
GENERAL, AS AGENT, ET AL.

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*Submitted May 20, 1921. Decided May 27, 1921.*

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Rates charged on carload shipments of niter cake to McGill, Nev., found unreasonable to the extent that they exceeded 47.5 cents from Hercules, Calif., and 32.5 cents from Bacchus and Garfield Smelter, Utah. Reparation awarded.

*Charles S. Chandler and B. L. Quayle for complainant.*

*Elmer Westlake, James S. Moore, jr., Fred H. Wood, C. W. Durbrow, Lester J. Hinsdale, James R. Bell, and Frank B. Austin for Director General, as Agent.*

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

DANIELS, *Commissioner*:

This proceeding was made the subject of a proposed report, and exceptions thereto were filed by defendant Director General of Railroads.

Complainant is a corporation engaged in smelting copper ores at McGill, Nev. By complaints filed June 3, 1920, it alleges that the rates charged on numerous carload shipments of niter cake from Bacchus and Garfield Smelter, Utah, and Hercules, Calif., to McGill, between June 29, 1918, and January 13, 1919, were unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reparation only is asked. Rates are stated herein in cents per 100 pounds and do not include the general increases of 1920.

Hercules is located about 25 miles east of San Francisco, Calif., on the Southern Pacific. The Santa Fe serves the same community, but under a different station designation. Bacchus and Garfield Smelter are on the Bingham & Garfield Railway approximately 20 miles southwest of Salt Lake City, Utah. Twenty-three carloads

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<sup>1</sup> This report also embraces No. 11517, Nevada Consolidated Copper Company v. Nevada Northern Railway Company and Director General, as Agent.

of niter cake averaging 82,368 pounds per car, were transported from Hercules to McGill via Southern Pacific to Cobre, Nev., Nevada Northern beyond, a distance of 752 miles. Nineteen carloads averaging 87,631 pounds per car were shipped from Bacchus and five carloads averaging 100,260 pounds per car were forwarded from Garfield Smelter. These latter shipments moved via the Bingham & Garfield to Garfield Junction, Utah, Western Pacific to Shafter, Nev., and Nevada Northern to McGill. The distances are 267 miles from Bacchus and 261 miles from Garfield Smelter. Charges on the shipments from Hercules were assessed at 94.5 cents, minimum 40,000 pounds, the applicable joint class-E rates governed by the western classification. Combination class-E rates governed by the western classification of 74 cents from Bacchus and 71.5 cents from Garfield Smelter, minimum 40,000 pounds, composed of the local rates of 7.5 and 5 cents, respectively, to Garfield Junction and the joint rate of 66.5 cents beyond, were applied on the shipments from these points. Effective January 23, 1919, a commodity rate of 32.5 cents, minimum 80,000 pounds, was established from Bacchus. A commodity rate of 47.5 cents, minimum 80,000 pounds, was made effective from Hercules on January 26, 1919, via routes by which the Santa Fe was the originating carrier. On July 22, 1920, the same rate was published via the route of movement. Complainant asks reparation on the basis of 32.5 cents on shipments from Bacchus and Garfield Smelter and 47.5 cents from Hercules. The Nevada Northern and Bingham & Garfield, which were not under federal control, admit the unreasonableness of the rates charged. The Director General, as Agent, will hereinafter be referred to as the defendant.

Niter cake is a subsulphate of sodium and contains 25 to 30 per cent of sulphuric acid. It is a residual product obtained in the manufacture of powder, and its value at the points of origin is said to have been \$2.50 per ton. Rain-proof box cars are required for its shipment.

Complainant formerly used sulphuric acid in its process of smelting ores. In July, 1918, it learned that sulphuric acid could no longer be procured from its former source of supply. About the same time it ascertained that sulphuric acid could be purchased elsewhere only upon basis of a yearly contract at a higher price than had been paid theretofore. Complainant accordingly determined to experiment with the use of niter cake as a substitute; and, after experimentation, began shipping that commodity to McGill as a regular substitute in August, 1918. It requested commodity rates from Hercules, by letter of August 9, 1918, and from Bacchus, on a date subsequent. A basis of commodity rates recommended by freight traffic committees

was subsequently made effective by freight rate authorities issued by the Director General, effective from Hercules January 28, 1919; and from Utah points January 23, 1919. As complainant is now using another reagent further shipments of niter cake in any considerable quantity appear improbable.

Complainant contends that as niter cake is a low-grade commodity which loads heavily, and, generally speaking, is desirable traffic, the imposition of class rates on the volume moved was unreasonable. It is defendant's position that the movement was unusual and sporadic, and therefore, there is no reason for a retroactive departure from the normal class basis. Defendant asserts that the commodity rates were established upon request without unnecessary delay, and contends that the establishment of such lower rates is not indicative that the class rates previously applicable were unreasonable.

The earnings on the shipments in question compared with those that would have accrued at the rates asked are as follows:

To McGill from—	Distance.	Number of shipments.	Average weight.	Rate charged.	Rate asked.	Earnings per car.	Car-mile earnings.	Ton-mile earnings.
	Miles.		Pounds.	Cents.	Cents.		Cents.	Mills.
Hercules <sup>1</sup> .....	752	23	82,368	94.5	.....	\$778.38	108.5	26.5
Hercules.....	752	23	82,368	.....	47.5	391.25	53	12.5
Bacchus <sup>2</sup> .....	267	19	87,631	74	.....	645.47	243.8	55.4
Bacchus.....	267	19	87,631	.....	32.5	284.89	106.7	24.3
Garfield Smelter <sup>2</sup> .....	261	5	100,260	71.5	.....	716.95	274.7	54.8
Garfield Smelter.....	261	5	100,260	.....	32.5	326.85	124.8	24.5

<sup>1</sup> Two-line haul.

<sup>2</sup> Three-line haul.

Complainant cites rates from San Francisco to McGill, which apply by intermediate application from Hercules, of 42 cents on portland cement, 59.5 cents on lumber, and 37.5 cents on fuel oil, and corresponding rates on other commodities rated B, C, D, and E in western classification, which produce car-mile revenues ranging from 18 to 33.5 cents at the applicable minimum weights. Similar comparisons are made with rates contemporaneously in effect from Ogden, Utah, to McGill, of 26.5 cents on cement and plaster, and other rates on commodities more valuable than niter cake, but otherwise comparable from a transportation standpoint. This distance embraces substantially the entire length of haul of the niter-cake shipments which originated at Bacchus and Garfield Smelter. Defendant urges that the rates cited by complainant are not fairly comparable, as they apply on commodities moving regularly in substantial volume from established commercial and jobbing centers.

Complainant owns all of the capital stock of the Nevada Northern except the qualifying shares of directors. Defendant, while maintaining that each joint rate charged was reasonable considered in

its entirety, contends that, in any event, the divisions of the joint rates charged which accrued to the federally controlled roads were reasonable. It is argued that complainant has not been damaged because it owned the Nevada Northern, which received a relatively high proportion of the rates charged in comparison with the mileage hauled. The Nevada Northern received its full local rate of 46.5 cents as its division of the rates charged on all shipments. The Southern Pacific also received its local rate of 48 cents to Cobre as its division of the joint rate from Hercules. It is shown that the rate to Cobre compared favorably with other class-E rates for hauls of substantially equal length in the same general territory.

Defendant emphasized the desert character of the territory traversed, with its attendant paucity of traffic, and introduced in evidence as comparisons numerous commodity rates in effect from Salt Lake City to McGill, which produce car-mile revenues ranging from 86 to 197 cents. These rates apply on fresh fruit and vegetables and manufactured articles of comparatively high value, rated fifth class or higher in western classification. The car-mile revenues accruing to the Western Pacific on this traffic are not shown. The proportions of the rate of 32.5 cents subsequently established from Bacchus, accruing to lines, Garfield Junction to McGill, would, on basis of the shipments from Bacchus and Garfield Smelter, yield car-mile earnings of 76.8 cents to the Western Pacific and 99.7 cents to the Nevada Northern.

Approximately four million pounds of niter cake, practically a waste product, were transported prior to the reduction of the rates. The shipments from Hercules continued until shortly before the hearing in this proceeding. The rates subsequently established are not relatively lower than those applying to McGill on other low-grade commodities. The divisions received by the different carriers have a bearing only on the proportionate amount of reparation each should pay.

We find that, except on the two carloads shipped from Hercules on June 29, 1918, and on July 17, 1918, for experimental purposes, the rates assailed were unreasonable to the extent that they exceeded 47.5 cents from Hercules and 32.5 cents from Bacchus and Garfield Smelter; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined upon this record. Complainant should comply with rule V of the Rules of Practice.

No. 11678.<sup>1</sup>

## MILLSAPS COTTON COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND VICKSBURG,  
SHREVEPORT & PACIFIC RAILWAY COMPANY.

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*Submitted February 25, 1921. Decided May 20, 1921.*

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Rules and regulations governing concentration, compression, and reshipment of cotton at Monroe, West Monroe, and Ruston, La., found not unreasonable or otherwise unlawful. Complaint dismissed.

*H. J. Fernandez* for complainant.

*D. Lynch Younger* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is H. U. Millsaps, an individual, trading as Millsaps Cotton Company at Monroe, La. He alleges that defendants' rates, rules, and regulations governing the concentration, compression, and reshipment of cotton at Monroe, West Monroe, and Ruston, La., were and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to establish just and reasonable rates, rules, and regulations for the future and to award reparation on certain shipments which moved between May 27, 1919, and January 10, 1920. At the hearing it developed that the procedure required by defendants' regulations to secure the application of through rates from original points of shipment on cotton concentrated and compressed at and reshipped from the points named constitutes the principal cause of complaint.

The regulations assailed require that the original paid freight bills covering the inbound movement of the uncompressed cotton to the compress point be surrendered at the time the compressed cotton is reshipped "as evidence that such cotton \* \* \* is entitled to reshipment"; that the point and date of the original shipment be shown on the face of the outbound bill of lading; and that the railroad agent

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<sup>1</sup> This report also embraces No. 11679, Same v. Director General, as Agent, Vicksburg, Shreveport & Pacific Railway Company, et al.

cancel and retain the original expense bills surrendered and endorse thereon the number and date of the waybill covering the outbound shipment. If the freight charges are prepaid from the compress point, the difference between the charges at the through rate and the inbound rate is collected from the reshippers. If the shipments from the compress point are forwarded collect, the railroad agent at that point refunds to the reshippers the charges collected on the inbound movement. In either event the cotton is billed at the through rate from the original point of shipment.

Complainant contends that compliance with these regulations is burdensome and difficult for the reason that the reshipper or his agent must often wait at the freight station a considerable time, in some instances more than an hour, for defendants' agent to perform the clerical work incident to the readjustment of the freight charges. It appears that in any event the bills of lading covering the outbound movement must be presented at the freight station for verification and signature. At Vicksburg, Miss., one of the larger compress points on the line of defendant, Vicksburg, Shreveport & Pacific, where the same regulations as are here considered obtain, the practice is to send outbound bills of lading and inbound freight bills to the freight station by messenger and to call for the signed bills of lading and refund, if any, at another time.

The paid freight bills covering shipments from points on the Missouri Pacific to Monroe and Rayville, La., and from points on the Chicago, Rock Island & Pacific to Ruston, are not required to be surrendered at the time of reshipment. Those carriers allow 15 days within which claims may be presented for refund on the basis of the through rates from the original points of shipment. Complainant assumed that this was the rule of defendants and failed to present the inbound paid freight bills when making reshipments. Defendants oppose the adoption of the rule applied by the Missouri Pacific and the Rock Island on the grounds that it entails much additional accounting and that the concentration and compression arrangement is thereby rendered more susceptible of abuse.

The mere fact that rules and regulations may result in some inconvenience to shippers does not warrant a finding that they are unreasonable or otherwise unlawful. We find that the rules and regulations assailed are not unreasonable or otherwise unlawful. The complaints will be dismissed.



No. 11707.

DYER PACKING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,  
ET AL.

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*Submitted March 7, 1921. Decided May 20, 1921.*

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Rate on ripe tomatoes, in carloads, from Jackson and St. Francisville, Ill., to Vincennes, Ind., found unreasonable. Reparation awarded.

*R. B. Coapstick* for complainant.

*L. P. Day* and *R. D. Hunter* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation manufacturing tomato catsup at Vincennes, Ind., by complaint filed August 9, 1920, alleges that the rate of 12.5 cents charged on 36 carloads of fresh tomatoes shipped between August 16 and September 27, 1918, from Jackson and St. Francisville, Ill., to Vincennes was unreasonable to the extent that it exceeded 4.5 cents. The prayer is for reparation. Rates are stated in cents per 100 pounds.

The shipments from Jackson moved over the Baltimore & Ohio, 9 miles, and those from St. Francisville over the Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, 10 miles. Charges were collected at the applicable fourth-class rate of 12.5 cents, minimum 20,000 pounds. There appear to be outstanding overcharges on three of the shipments.

Complainant commenced the manufacture of catsup at Vincennes during the season of 1917. Before as well as after the shipments moved complainant secured its supply of tomatoes by trucks from neighboring farms. On July 25, 1918, it requested defendants to es-

establish a commodity rate of 4.5 cents from and to the points in question. Effective September 20, 1918, this rate was established from Jackson, and on October 28, 1918, a rate of 6.5 cents was established from St. Francisville.

Complainant refers to interstate commodity rates of 7 cents, maintained by the Big Four from Johnson, Ind., to Mount Carmel, Ill., approximately 11 miles, and 6.5 cents maintained by the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Panhandle, from and to a few points in this territory. Some of the distances shown in connection with the last-named rate are materially greater than from and to the points here under consideration. It also refers to various intrastate commodity rates contemporaneously in effect, particularly a rate of 4.5 cents from various stations on the Big Four to Indianapolis and other Indiana points where canning factories are maintained, and from and to a number of points on the Panhandle for hauls in some instances materially longer than from and to the points under consideration. Reference is also made to a distance rate of 4.5 cents, applicable for distances not exceeding 30 miles, between stations in Indiana on the Chicago & Eastern Illinois; and to a low basis of intrastate rates on various vegetables, including tomatoes, maintained by certain carriers in Illinois.

Defendants urge that the intrastate rates referred to were established as "missionary" rates and are on an exceedingly low basis, while the 6.5-cent rate of the Big Four from St. Francisville to Vincennes, and 7-cent rate of that carrier from Johnson to Mount Carmel, were based on interstate rates maintained by the Southern in this territory.

We find that the rate assailed was unreasonable to the extent that it exceeded 6.5 cents; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

INVESTIGATION AND SUSPENSION DOCKET No. 1800.  
ABSORPTION OF SWITCHING CHARGES AT TOLEDO,  
OHIO.

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*Submitted May 2, 1921. Decided May 31, 1921.*

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Proposed reduction in absorption of switching charges at Toledo, Ohio, found not justified. Suspended schedules ordered canceled.

*Walter A. Eversman, Brown, Geddes, Schmettau & Williams, and Wilson & Rector* for respondent.

*L. G. Macomber* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective February 23, 1921, the respondent, Hocking Valley Railway, proposes to reduce its absorption of switching charges of other carriers on carload traffic at Toledo, Ohio. Increases in the through charges to shippers would result. Upon protest of the Toledo Chamber of Commerce and Toledo Produce Exchange, the schedules were suspended until July 23, 1921. Charges will be stated in amounts per car.

Prior to August 26, 1920, respondent absorbed, under certain conditions, the switching charges of other carriers on carload traffic at Toledo, subject to a maximum of \$5, except that on transit grain it absorbed \$6, and on transit feed, \$8. On that date, in the general increases of 1920, switching charges at Toledo were increased 40 per cent, and respondent absorbs the full amount of this increase under the following tariff provision:

Where a tariff or a prior supplement to a tariff enumerated herein provides for the absorption, in whole or in part of another carrier's charges for special services enumerated above, the amount of the absorption will be increased by the amount that the charge for the service is increased.

The "special services enumerated above" include switching.

By the schedules under suspension respondent proposes to limit the amount of its absorption to \$7 on terminal carload traffic, \$8.50 on transit grain, and \$11 on transit feed, or an approximate increase of 40 per cent over the amounts absorbed prior to August 26, 1920. The effect of the proposed change will be seen from the following

illustration: The charge of the Toledo Terminal Railway for certain switching at Toledo from its connection with respondent was \$13 prior to August 26, 1920, and is now \$18. The amount absorbed by respondent was \$6 prior to August 26, 1920, and is now \$11. Under the proposed schedules \$8.50 would be absorbed by respondent, leaving a balance of \$9.50 to be paid by the shipper instead of \$7 as at present.

Respondent urges that under *Increased Rates, 1920*, 58 I. C. C., 220, it was required to absorb only 40 per cent of the increased switching charges. It states that this was the first time a reduction in the amount of the absorptions had come before it for consideration, and that the tariff containing the schedules under suspension also makes certain other corrections.

The mere fact, if true, that respondent need not have increased the amount of the absorption more than 40 per cent does not in itself justify the increased charges to shippers which would result from the decrease here proposed in the amount of the absorption. The burden rests upon respondent to justify the proposed increased charges. The tariff provision quoted was authorized by us in special permission No. 50340, and is similar to that established by the carriers generally following the general increases of 1920, and now in effect.

We find that respondent has not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

COMMISSIONER HALL dissents.

62 I. C. C.

No. 11409.

VISCOSE COMPANY

v.

AMERICAN RAILWAY EXPRESS COMPANY.

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*Submitted January 17, 1921. Decided May 25, 1921.*

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Rules and practice of defendant, unauthorized by its tariffs, whereunder shipments are refused unless the declared value thereof is marked on the package by the shipper, found unlawful. Order for the future entered.

*Harold S. Shertz and Edward C. Taylor* for complainant.

*A. M. Hartung and John R. Phillips* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner. The case was orally argued before us, and we have reached a conclusion differing in some respects from that suggested in the proposed report.

Complainant, a corporation engaged in the manufacture of artificial silk at Marcus Hook, Pa., and Roanoke, Va., alleges that the rules and practice of defendant whereunder it refuses to accept shipments unless the declared value thereof is marked on the package by complainant are unreasonable and unduly prejudicial; and result in the disclosure of information in violation of section 15, paragraph 11, of the interstate commerce act. We are asked to prescribe reasonable rules, regulations, and practices for the future.

The yearly output of complainant's plants is from seven to nine million pounds, of which 10 to 12 per cent is shipped by express. Its product, a textile yarn, is packed in standard cases containing 220 pounds. The basic rates applicable are conditioned upon a declared or released value not exceeding \$50 for a shipment of 100 pounds or less, and not exceeding 50 cents per pound for shipments in excess of 100 pounds. An additional charge of 10 cents applies for each \$100 or fraction thereof in excess of the value stated. The value of complainant's product exceeds \$50 per 100 pounds and averages about \$1,350 per shipment.

The rules of defendant requiring the value to be marked on packages are not on file with us, but are published in a book of general instructions to employees and read as follows:

323. (a) Receipts to show value: Shippers must be required to state the nature of the shipments and to declare the value thereof (except on ordinary live stock), which value must be inserted in "Value" space on the receipt and marked on the package. Shipper's declaration of value may be made by notation, "Not exceeding \$50.00" or "Not exceeding \$50.00 or 50¢ per pound, actual weight." \* \* \* If shipper or his representative declines to declare value and sign receipt or agreement, the shipment must be refused.

6-A. \* \* \* We wish to impress upon all agents, receiving clerks and viciemen the need of assuring themselves at the time of receipting for shipments: \* \* \* that the declared value is marked on all shipments weighing 100 lbs. or less and valued over \$50.00, and on all shipments weighing over 100 lbs., and valued at over 50 cents per lb.

Complainant was not required to mark the value upon packages at Marcus Hook until November 10, 1919, and at Roanoke until after June 21, 1920, the date of the first hearing in this case. When shipments comprised more than one package complainant was required, at Marcus Hook, to show the value of each package; at Roanoke it was required merely to show the total value. It is asserted by defendant that all shippers at both stations are now required to mark upon packages the total value only.

The value of the shipments and the prices made its customers by complainant vary according to the season of the year, the quantity and quality shipped, and other circumstances. It has been complainant's practice to furnish defendant a duplicate receipt showing the total value of each shipment and other pertinent information. Complainant considers it unnecessary to show the value on the package when it can be ascertained from the receipt, and asserts that valuation marks on packages might induce pilfering or otherwise operate to its detriment. The value, however, is also shown on the waybill attached to the shipment where it is subject to observation. If shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose.

Since July 1, 1920, defendant has adopted the practice generally of retaining duplicate express receipts. Although it is possible to waybill shipments from the information shown in the receipts, it has been and is defendant's practice to waybill them from the marks on the packages, after weighing. When the charges are billed "collect" the amount collectible is not shown in the waybill, but is computed by the agent at destination from information shown in the waybill and on the package. Practically all of complainant's shipments are made without prepayment of charges. Defendant asserts that cancellation of the rules assailed would be detrimental to efficiency in

the handling of its business and might result in the application of improper charges where the waybills covering "collect" shipments are lost or mutilated in transit, and that enforcement of the rule is a safeguard against theft and pilferage, as shipments of high value are given more than ordinary care while in transit. Each employee who handles such shipments is required to receipt for the packages, thereby reducing losses to a minimum.

As early as 1866 a rule of the express companies required the value of shipments, if exceeding \$50, to be marked on the package. In our order of July 24, 1913, in *Express Rates, Practices, Accounts, and Revenues*, 28 I. C. C., 131, the following classification provision was prescribed:

Shippers must be required to state the nature of the shipment, to declare the value thereof, which value, when given, must be inserted in the receipt, marked on the package, and entered on the way-bill.

Prior to July 1, 1917, this requirement was published as a part of rule 2 (b) of the express classification, and was filed with us; but on that date the portion of the rule which provided that the value must be marked on the package and entered on the waybill was omitted from the classification.

The rules quoted from defendant's book of instructions authorize refusal of shipments when the shipper or his representative declines to disclose the value and to sign the prescribed receipt or agreement, but not when he merely fails or refuses to mark the value upon packages. Whether, under these rules, the duty of so marking the packages devolves upon the shipper or upon defendant's employees is uncertain. By section 1 of the act carriers are required, among other things, to establish, observe, and enforce just and reasonable regulations and practices affecting "the manner and method of presenting, *marking*, packing and delivering property for transportation." We have held in several cases involving rules of freight classifications or tariff that carriers reasonably may require shippers to properly mark their shipments, and in one such case, *Colorado Tent & Awning Co. v. B. & M. R. R.*, 21 I. C. C., 565, we said:

Reasonable and pertinent rules are as essential a part of the tariff as the rates which are governed or limited by their application.

Clearly defendant's rules and practice herein assailed limit, and in fact, completely nullify the application of rates which otherwise would be available to complainant under defendant's published tariffs. The facts of record seem to show that it would be in the interest of operating efficiency and not unreasonable to require shippers to mark the value on packages, when shipments are subject to rates based on valuation. But if defendant desires to enforce such

a regulation, it should be plainly stated in its schedules and uniformly observed.

We find that defendant's action in requiring shippers to mark the value of their shipments on the package, and in refusing to accept shipments unless so marked by shippers, was, and for the future will be, unlawful in the absence of proper provisions in defendant's schedules authorizing such action. An appropriate order will be entered.

No. 11283.

MIAMI COPPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ARIZONA EASTERN  
RAILROAD COMPANY, ET AL.

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*Submitted December 27, 1920. Decided May 20, 1921.*

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Rates applicable on pine oil, in tank-car loads, from Pensacola, Fla., to Miami, Ariz., found unreasonable. Reasonable maximum rate prescribed and reparation awarded.

*Guggenheimer, Untermeyer & Marshall* and *Frank M. Swacker* for complainant.

*Charles Franklin* and *William Burger* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

#### By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and oral argument was had. We have reached conclusions differing from those recommended by the examiner.

Complainant, a corporation, engaged in the mining and concentrating of copper ores at Miami, Ariz., alleges by complaint filed February 28, 1920, that the combination rates charged by defendants on numerous tank-car loads of pine oil moved since March 15, 1918, from Pensacola, Fla., to Miami were and are unreasonable, unduly prejudicial, and in violation of the fourth section of the interstate commerce act. We are asked to award reparation and to establish a



reasonable rate for the future. Rates will be stated in amounts per 100 pounds, and unless otherwise indicated they do not include the general increase authorized by us on July 29, 1920.

The shipments moved over the Gulf, Florida & Alabama to Atmore, Ala., Louisville & Nashville to New Orleans, Southern Pacific system to Bowie, Ariz., and Arizona Eastern beyond, about 1,767 miles. The traffic averaged about two cars per month. Doubt existed as to the proper charges to be collected. The applicable rates were as follows: between March 15 and June 24, 1918, a combination rate of \$1.63, composed of commodity rates of 20 cents to New Orleans and \$1 thence to Bowie, and the fifth-class rate of 43 cents beyond; between June 25, 1918, and February 19, 1919, the New Orleans-Bowie combination of \$2.04; and between February 20, 1919, and August 25, 1920, inclusive, a combination rate of \$1.915, composed of a joint transcontinental commodity rate of \$1.375 applicable from group-C points, including Pensacola, to Bowie, and the local fifth-class rate of the Arizona Eastern, 54 cents, for 135 miles beyond. The latter combination was increased August 26, 1920, to \$2.51.

The claim for reparation is based upon a rate of \$1.015, the sum of the rates in effect from June 25, 1918, to August 25, 1920, composed of the sixth-class rate of 20 cents from Pensacola to New Orleans on pine oil, plus a commodity rate of 81.5 cents from Slidell, La., to Miami on "pine tar flotation oil." Slidell is on the New Orleans & Northeastern and New Orleans is intermediate between Slidell and Miami.

Pine oil and pine-tar flotation oil are derived from pine logs. Pine oil is produced by a steam distillation process and pine-tar flotation oil by a destructive distillation process. There are two kinds of pine-tar oil, one described as crude or mineral tar oil, a black tarry substance, and the other refined tar oil. Pine oil and refined tar oil are both transparent, but the refined tar oil has a cherry color and is darker than pine oil. The tariff description "pine tar flotation oil" for the commodity rate from Slidell to Miami includes crude, or commercial, and refined tar oil, but the copper-ore concentration plants at Miami and other western points use principally refined tar oil and pine oil for flotation purposes. Pine oil is also used in the manufacture of medicines, disinfectants, and perfumes, but is not shipped in tank-car loads west of the Mississippi River for those uses. Complainant contends that there is no inherent difference between the pine oil and pine-tar oil shipped to the mining towns for flotation purposes, and that the rates on pine oil should not exceed the rates on pine-tar flotation oil.

Complainant paid 90 cents per gallon for the pine oil comprising these shipments, and it has paid as much as \$1.40. Until about

January 1, 1920, refined pine-tar oil was from 10 to 15 cents less in value than pine oil, but at the time of the hearing in June, 1920, the spread in values of pine oil and refined pine-tar oil was greater than formerly and the values abnormally high. Complainant shows that there have been no loss-and-damage claims on pine oil, and contends that since there are no traffic or transportation differences between the two oils shipped in tank-car loads, the differences in prices do not warrant the present differences in rates.

Defendants explain that the commodity rate on pine-tar flotation oil from Slidell to Miami was established in 1917 to move a low-grade material which, the manufacturers told them, was similar to creosote. The 65-cent rate then established on pine-tar flotation oil was the same as on creosote. Later it was increased to 81.5 cents under general order No. 28 of the Director General of Railroads. A movement of this commodity from Slidell failed to materialize and that comparison need not be further considered.

The following comparisons drawn from complainant's exhibits show the rates on pine oil, in tank-car loads, with distances, earnings per car-mile based on 60,000 pounds, and earnings per ton-mile:

From Pensacola, Fla., to—	Distance.	Rate per 100 pounds.	Rate per ton.	Earnings per ton-mile.	Earnings per car-mile.
	<i>Miles.</i>			<i>Mills.</i>	<i>Cents.</i>
Miami, Ariz.....	1,707	\$1.915	\$38.30	21.67	65.1
Hayden, Ariz.....	1,948	1.44	28.80	14.78	44.3
Butte, Mont.....	2,155	1.375	27.50	12.76	38.2
Wallace, Idaho.....	2,412	1.375	27.50	11.40	34.2
Spokane, Wash.....	2,534	1.375	27.50	10.55	32.6

Comparisons show that the rate of \$1.915 assailed and in effect February 20, 1919, to August 25, 1920, was much higher, distance considered, than the rates to points in California, Idaho, Montana, and Washington. The transcontinental rate of \$1.375 applies on other vegetable oils, including castor, coconut, corn, lard, neatsfoot, palm, rosin, transel, cottonseed, and peanut oils, some of which are edible. Complainant shows that the average values of some of these oils are higher than the contract price of 90 cents paid by it for pine oil. There are competing mining operations at Hayden, Butte, and Wallace, which procure their oils for flotation purposes from points in the turpentine belt, such as Pensacola and Jacksonville, Fla., Brunswick and Fayetteville, Ga., and Bay Minette, Ala., at rates considerably lower than those to Miami.

Shipments to Hayden leave the main line of the Southern Pacific at Maricopa, Ariz., 201 miles west of Bowie, and move thence over the Arizona Eastern, north through Tempe, thence back and eastward over the Christmas branch of the latter line, a distance of 112

miles from Maricopa. A rate of \$1.44 to Miami, or the same as that to Hayden, would yield 16.3 mills per ton-mile and 48.9 cents per car-mile. The rate of \$2.51 to Miami, effective August 26, 1920, yields 28.41 mills and 85.2 cents, respectively.

Defendants contend that pine oil is like turpentine and state that it takes turpentine rates throughout the south. The joint class rate on spirits of turpentine from Pensacola to Miami at the time of the hearing was \$2.415. The commodity rate of \$1.375 on pine oil to Bowie is the same as the rates to Pacific coast territory and resulted, defendants state, from our decisions respecting transcontinental rates to intermountain territory. In support of the class rates charged for the haul from Bowie to Miami, the terminus of the Globe division of the Arizona Eastern, defendants cite *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.*, 40 I. C. C., 573, in which we discussed the difficulties in operating over that division and the propriety of basing rates to points thereon on the Bowie combinations; and they rely upon our findings that the class rates on that line were neither excessive nor unreasonable.

There is no proof of undue prejudice and no violations of the fourth section of the act are shown.

We find that the applicable rates were unreasonable to the extent that they exceeded \$1.44 per 100 pounds from March 15, 1918, to August 25, 1920, and that the present rate is and for the future will be unreasonable to the same extent subject to the increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

We further find that the shipments were made as described between March 15, 1918, and June 24, 1920, and that complainant paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges collected and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

62 I. C. C.

No. 11616.

E. I. DU PONT DE NEMOURS &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted February 18, 1921. Decided May 19, 1921.*

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Rate on bituminous coal, in carloads, from Midland, Ind., to Grayling, Mich., found not unreasonable. Complainant not shown to have been damaged by reason of alleged unjust discrimination or undue prejudice. Complaint dismissed.

*Harvey S. Farrow* for complainant.

*Frank H. Towner and Winston, Strawn & Shaw* for defendant.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

#### BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, by complaint filed July 8, 1920, alleges that the rate charged on 72 carloads of bituminous coal shipped from Midland, Ind., to Grayling, Mich., during the period between October 14 and November 25, 1918, inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates will be stated in amounts per net ton.

The shipments moved over the Chicago, Indianapolis & Louisville to Michigan City, Ind., thence by the Michigan Central, 557 miles. During the period specified complainant operated at Grayling a plant for the manufacture of charcoal. Prior to October 14, 1918, coal for this plant was obtained from Ohio, but on that date and throughout the period complainant was obliged, because of the regulations of the United States Fuel Administration, to procure its coal from Midland, which is in the Linton district of Indiana.

The rate charged was the applicable combination of \$3.47, composed of a joint commodity rate of \$2.37 to Bay City, Mich., and \$1.10 beyond. On November 26, 1918, a joint rate of \$2.62 was established. Complainant contends that the rate charged was unreasonable to the extent that it exceeded this subsequently established rate, and seeks reparation to that basis.

Under the regulations of the Fuel Administration the market in Michigan for coal from the Linton district in Indiana had been re-

stricted prior to October 10, 1918, to a certain zone comprising approximately the western half of the lower peninsula of Michigan. Grayling lies to the east of this zone. From Midland to points within the zone there were in effect joint rates lower than the rates to Grayling. Typical instances cited by complainant were, \$2.42 to Cadillac, 439 miles; \$2.52 to East Jordan, 550 miles; and \$2.62 to Charlevoix, Petoskey, and Mackinaw City, 568, 573, and 567 miles, respectively. On October 10, 1918, the zone was enlarged so as to include Grayling and other points. The carriers thereupon made a general readjustment of the bituminous coal rates from the Indiana fields to Michigan points, involving some increases as well as decreases, which became effective on November 26, 1918. Under this readjustment the rate from Midland to Grayling was reduced to \$2.62, as stated, but no change was made in the rates to the other Michigan destinations named.

Complainant also cited rates for distances ranging from 445 to 592 miles, from certain Ohio points to Grayling, which were lower than the rate charged.

We have frequently said that the subsequent reduction of a rate does not, of itself, prove that the rate previously in force was unreasonable. The transportation conditions underlying the readjustment of the rates from Indiana mines to Michigan points were not disclosed. It is apparent that these shipments were exceptional and moved as they did because of an emergency. Defendant's witness testified that only a small amount of coal ordinarily moves from the Linton district to Grayling, and to Michigan points generally.

In support of the allegations of unjust discrimination and undue prejudice complainant's witness testified that at Cadillac and East Jordan there are charcoal manufacturing plants which compete with the plant at Grayling in the sale of charcoal. It appears that about 50 per cent of the charcoal produced by complainant at Grayling is sold in competition with those plants. It is urged that because of the lower rates on bituminous coal from Midland to Cadillac and East Jordan, in effect when complainant's shipments moved, there resulted undue preference of such points. Complainant's witness was not informed whether its competitors obtained any coal from Midland.

Upon this record we find that the rate assailed was not unreasonable, and that complainant has not shown damage by reason of the alleged unjust discrimination or undue prejudice.

The complaint will be dismissed.

No. 11626.

## TALLULAH COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MISSOURI  
PACIFIC RAILROAD COMPANY.

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*Submitted January 21, 1921. Decided May 19, 1921.*

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Rate on bituminous coal, in carloads, from southern Illinois mines to Tallulah, La., found not unreasonable or unduly prejudicial. Complaint dismissed.

*Thomas P. Goodwin* for complainant.

*Henry G. Herbel* and *James M. Chaney* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing vegetable oils at Tallulah, La., alleges by complaint filed July 12, 1920, that the rate charged by defendants on bituminous coal, in carloads, from mines on the Missouri Pacific in southern Illinois to Tallulah since June 25, 1918, was and is unjust, unreasonable, and unduly prejudicial. We are asked to award reparation and to establish a reasonable and nonprejudicial rate for the future. Rates are stated in amounts per net ton.

Prior to June 25, 1918, the Missouri Pacific, Illinois Central, and Mobile & Ohio each published a rate of \$2.25 on coal from southern Illinois mines to Tallulah. On that date, following general order No. 28 of the Director General of Railroads, the rate of the Missouri Pacific was increased to \$2.70, the rate charged on complainant's shipments, while the Illinois Central and Mobile & Ohio tariffs, in disregard of the rule stated in that order governing the disposition of fractions, made the rate \$2.65. Complainant contends that as the supplement to general order No. 28, issued June 12, 1918, published the specific increases on coal authorized by the general order, but not the rule concerning fractions, such rates were excepted from the application of that rule. This contention is not sustained by the provisions of the

supplement, and if it were the fact would not be controlling. *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63.

The shipments moved over the Missouri Pacific, crossing the Mississippi River at Thebes, Ill. For the average distance of 467 miles the rate charged yielded ton-mile earnings of 5.78 mills. The evidence introduced by defendants shows that the rates contemporaneously maintained over the Missouri Pacific from the same mines to numerous destinations in Louisiana and Arkansas for comparable distances yielded considerably higher ton-mile earnings. There is no evidence of undue prejudice.

We find that the rate assailed was not unreasonable or unduly prejudicial.

The complaint will be dismissed.

62 I. C. C.

No. 11646.

UNITED PAPERBOARD COMPANY, INCORPORATED,  
v.  
MAINE CENTRAL RAILROAD COMPANY, DIRECTOR  
GENERAL, AS AGENT, ET AL.

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*Submitted February 16, 1921. Decided May 19, 1921.*

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Rate applicable on wood-pulp board, in carloads, from Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., found not unreasonable or unduly prejudicial. Complaint dismissed.

*R. L. Stover and J. T. Schatt for complainant.*

*John F. Finerty and Alex M. Bull for Director General, as Agent.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing box board and wood-fiber products, with principal office at New York, N. Y., alleges that the rate charged by defendants on a carload of wood-pulp board shipped October 22, 1918, from Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., was unreasonable and unduly prejudicial to the extent that it exceeded 28.5 cents. The prayer is for reparation. Rates are stated in cents per 100 pounds, and do not include the general increase of 1920.

The shipment weighed 54,470 pounds and moved as routed by complainant over the Maine Central, Boston & Maine, New York, New Haven & Hartford, and Long Island. Charges of \$179.75 were collected at a rate of 33 cents. The rate applicable was 38.5 cents, a combination of a commodity rate of 24.5 cents to Fresh Pond, N. Y., and the fifth-class rate of 9 cents beyond. Bushwick Station is 4 miles from Fresh Pond. The shipment was undercharged \$2.72. Effective December 7, 1918, a proportional fifth-class rate of 4 cents was established from Fresh Pond to Bushwick Station.

Complainant refers to a joint commodity rate of 27 cents on this commodity from Fairfield to Newark and Trenton, N. J., and Philadelphia, Pa., more distant points, to which Bushwick Station is not intermediate over any route. Complainant also asserts that when



the shipment moved it was the general practice of carriers in official classification territory to maintain rates on wood-pulp board and kindred products 83½ per cent of the sixth-class rates.

Defendants' witness testified that the 9-cent factor was the minimum fifth-class rate prescribed in general order No. 28 of the Director General of Railroads for application in official classification territory for line-haul movements; and that this 9-cent rate compares favorably with, and in many instances is less than, minimum fifth-class rates approved by us in various cases, as increased under general order No. 28. Particular attention is directed to the fifth-class rate of 7 cents, prescribed in *Proposed Increases in New England*, 49 I. C. C., 421, for application on class-A lines in New England for a distance of 5 miles or less, and increased under general order No. 28 to 9 cents.

We find that the rate applicable was not unreasonable or unduly prejudicial.

The complaint will be dismissed.

62 I. C. C.

No. 11750.

SAMUEL D. WEST

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND  
DIRECTOR GENERAL, AS AGENT.

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*Submitted February 18, 1921. Decided May 19, 1921.*

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Rates on empty barrels, in carloads, from Carthage and Republic, Mo., to Westville, Okla., found unreasonable. Reparation awarded.

*Samuel West* for complainant.*L. P. Nash* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a grower and shipper of apples at Westville, Okla., alleges by his complaint filed August 23, 1920, that the rates charged by defendants on four carloads of empty barrels shipped in July and August, 1918, from Carthage and Republic, Mo., to Westville were unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Two shipments originated at Carthage and two at Republic. All moved to destination over the St. Louis-San Francisco, hereinafter called the Frisco. Upon the two shipments from Carthage charges of \$139.75 were collected based upon rates of 37.5 and 37 cents and weights of 20,000 and 17,500 pounds, respectively. The charges should have been based on the applicable rate of 37 cents and weights of 19,880 pounds and 15,680 pounds, respectively. These shipments were overcharged. Charges of \$116.03 were collected upon the shipments from Republic based upon the applicable rate of 37 cents and an aggregate weight of 31,360 pounds.

Republic is intermediate from Springfield, Mo., and Carthage is intermediate from Joplin, Mo., over the Frisco to Westville. When the shipments moved the Frisco maintained a commodity rate of 20 cents, minimum 14,000 pounds, subject to rule 6-B of western 62 I. C. C.

classification, on empty barrels to Westville from Joplin and Springfield, in connection with which it published a provision in accordance with rule 77 of Tariff Circular 18-A, that upon application the 20-cent rate would be established from intermediate points over the direct line, which was a substantial compliance with the fourth section of the interstate commerce act. Apparently no request was made for the establishment of this rate prior to the movement. The Frisco is the direct line from Springfield, but its route is a few miles in excess of the direct line from Joplin to Westville. A commodity rate of 20 cents, minimum 14,000 pounds, subject to rule 6-B, was established on November 6 and December 31, 1919, from Republic and Carthage, respectively.

Defendants concede that it is the usual practice of the Frisco to maintain the same rates on traffic from Carthage and Republic as from Springfield and Joplin.

We find that the rate applicable was unreasonable to the extent that it exceeded 20 cents per 100 pounds, minimum 14,000 pounds, subject to rule 6-B of the western classification; that complainant made the shipments as described and paid and bore the charges thereon; and that he has been damaged and is entitled to reparation in the sum of \$121.94, with interest, taking into consideration the outstanding overcharges.

An appropriate order will be entered.

62 I. C. C.

No. 11844.

## INGRAM-DAY LUMBER COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted March 19, 1921. Decided May 19, 1921.*

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Rates on lumber in carloads from Mobile, Ala., to Chattanooga, Tenn., found not unreasonable or unduly prejudicial. Complaint dismissed.

*Robert D. Burbank* for complainant.

*William Burger* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the lumber business at Lyman, Miss., alleges by complaint filed September 20, 1920, that the rate of 20.5 cents charged by defendants on 13 carloads of lumber shipped in January, 1919, from Mobile, Ala., to Chattanooga, Tenn., was unreasonable and unduly prejudicial to the extent that it exceeded 17.5 cents. We are asked to award reparation and to prescribe a reasonable and nonprejudicial rate for the future. Rates are stated in cents per 100 pounds.

The shipments moved over the Louisville & Nashville to Birmingham, Ala., and the Southern beyond, 418 miles. Charges were collected at the applicable joint commodity rate of 20.5 cents. A rate of 17.5 cents applied from Mobile to Chattanooga over the Southern direct, 409 miles, and over the Mobile & Ohio through Meridian and the Southern beyond, 430 miles. On August 26, 1920, following the general increases authorized by us on July 29, 1920, the foregoing rates were increased to 25.5 cents over the route of movement and to 22 cents over the two other routes. The rate charged applied, and the present rate applies, over the Louisville & Nashville through five different junctions over routes which average 502 miles.

The rate charged yielded 9.8 mills per ton-mile and the present rate yields 12.2 mills over the route of movement. The present rate yields about 10 mills per ton-mile for the average haul of 502 miles.

When the shipments moved complainant had the two other routes over which the lower rate applied, but apparently on account of better and more available facilities at the wharf of the Louisville & Nashville delivered its lumber to that carrier notwithstanding its higher rate. We have frequently said that the existence of a lower rate over another route is insufficient to establish the unreasonableness of the rate applicable over the route of movement.

We find that the rate charged was not and that the present rate is not unreasonable or unduly prejudicial.

The complaint will be dismissed.

62 I. C. C.

No. 11169.<sup>1</sup>

## NATIONAL FIREPROOFING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA  
COMPANY, ET AL.

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*Submitted October 22, 1920. Decided May 25, 1921.*

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Rates on coal, in carloads, from certain points in the Mercer-Butler and Pittsburgh districts of Pennsylvania to Perth Amboy, Natco, and Port Murray, N. J., found not unreasonable or unduly prejudicial. Complaints dismissed.

*Gallagher, Kohlsaat & Rinaker and E. B. Wilkinson* for complainant.

*James Stillwell and Guernsey Orcutt* for Pennsylvania lines, Bessemer & Lake Erie Railroad Company, and Director General.

*G. G. Early* for Pittsburgh & West Virginia Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is a corporation engaged in the manufacture of clay hollow building tile and other clay products, with its principal office at Pittsburgh, Pa., and plants at Perth Amboy, Natco (formerly Lorillard), and Port Murray, N. J. By complaint seasonably filed complainant alleges that the rates on coal in carloads from certain points in the Mercer-Butler and Pittsburgh districts of Pennsylvania to Perth Amboy, Natco, and Port Murray, N. J., were unreasonable and unduly prejudicial to the extent that they exceeded joint rates of \$2.40 prior to June 25, 1918, and \$2.80 thereafter. We are asked to award reparation and to establish reasonable joint rates for the future.

In this report the term Pennsylvania refers to all the lines of the Pennsylvania system. The rates, stated in amounts per long ton unless otherwise indicated, are those in effect prior to the general increases authorized in 1920.

Coal for the operation of complainant's plants is ordinarily obtained in the Westmoreland district of Pennsylvania about 20 or 30 miles east of Pittsburgh. Owing to extraordinary conditions exist-

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<sup>1</sup> This report also embraces No. 11169 (Sub-No. 1), Same v. Director General, as Agent, Pittsburgh, Chartiers & Youghiogheny Railway Company, et al.

ing during the year 1918 it was unable to obtain sufficient coal from the Westmoreland district and procured considerable quantities from certain mines in the so-called Mercer-Butler district of Pennsylvania, Butler, Pa., at the southern end of that district, being about 50 miles north of Pittsburgh; and also from certain mines in the Pittsburgh district, from 5 miles to 10.6 miles west of Pittsburgh.

Complainant's plants at Perth Amboy are reached by the Central Railroad Company of New Jersey, the Lehigh Valley Railroad, and the Pennsylvania; at Natco by the Central Railroad Company of New Jersey; and at Port Murray by the Delaware, Lackawanna & Western Railroad. Most of the shipments from the Mercer-Butler district originated on the Bessemer & Lake Erie Railroad; some on the Pennsylvania; and two cars on the Western Allegheny Railroad, not a party defendant. Those from the Pittsburgh district originated on the Pittsburgh & West Virginia Railroad, the Pittsburgh, Chartiers & Youghiogeny Railway, and the Pennsylvania. Most of the shipments from the Bessemer & Lake Erie mines moved via Butler, thence via the Buffalo, Rochester & Pittsburgh Railway, the New York Central Railroad, and the Philadelphia & Reading Railway, in connection with either the Central Railroad Company of New Jersey or the Lehigh Valley, hereinafter called the Clearfield route. Most of the shipments from the Mercer-Butler district originating on the Pennsylvania, and all from the Pittsburgh district, moved by way of Pittsburgh and thence via the Pennsylvania and eastern connections. The shipments from the Western Allegheny, and several from the Bessemer & Lake Erie and the Pennsylvania in the Mercer-Butler district, moved by way of Buffalo, N. Y., and the Delaware, Lackawanna & Western or the Lehigh Valley beyond. No joint rates applied on coal over these routes and charges were assessed as follows:

Origin.	To—	Via—	Period.	Rate.		
				To junction.	Beyond.	Total.
<b>Butler-Mercer district:</b>						
B. & L. E.....	Perth Amboy.	Butler.....	Prior to June 25, 1918..	\$0.55	\$2.10	\$2.65
Do.....	do.....	do.....	After June 25, 1918.....	.80	2.50	3.30
Do.....	do.....	Buffalo....	do.....	1.60	2.95	4.55
Do.....	Port Murray..	do.....	do.....	1.50	4.00	5.50
Western Allegheny.....	do.....	do.....	Prior to June 25, 1918..	1.15	3.20	4.35
Penna.....	Perth Amboy and Natco.	Pittsburgh.	do.....	1.40	2.40	3.80
Do.....	do.....	do.....	After June 25, 1918.....	1.80	2.80	4.60
Do.....	Port Murray..	do.....	Prior to June 25, 1918..	1.40	4.20	5.60
Do.....	do.....	Buffalo....	After June 25, 1918.....	1.25	4.00	5.25
<b>Pittsburgh district:</b>						
Penna. and P. & W. Va.....	Perth Amboy and Natco.	Pittsburgh.	Prior to June 25, 1918..	.45	2.40	2.85
Do.....	do.....	do.....	After June 25, 1918.....	.60	2.80	3.40
Pgh., Ch. & Yough.....	Natco.....	do.....	Prior to June 25, 1918..	.50	2.40	2.90

The rates above shown from the mines to the junction points and from Buffalo to Port Murray are rates per net ton. The rates charged were, generally speaking, legally applicable over the routes of movement, but there are outstanding overcharges and undercharges on certain shipments.

Complainant alleged at the hearing that a number of the shipments, including those that moved via Buffalo, were misrouted, but was not prepared to prove the allegation, and asked that it be disregarded. Defendants admitted misrouting one shipment.

Excluding the routes via Buffalo, which admittedly are unnatural and unreasonably circuitous, the distances via the routes over which the shipments moved are from 430 miles to 543 miles from the Mercer-Butler field and from 413 miles to 483 miles from the Pittsburgh field. The distances from the points of origin in the Butler-Mercer district on the Bessemer & Lake Erie to Butler range from 10 to 22 miles and average about 18 miles. The Clearfield route via Butler is the short line, the average distances being 430 miles to Perth Amboy, 449 miles to Natco, and 376 miles to Port Murray. The route via Butler and the Pennsylvania is a little longer, but is composed of only two or three lines, as against the five or six lines comprising the Clearfield route. From the points of origin in the Butler-Mercer district on the Pennsylvania, about 71 miles north of Pittsburgh and in the Pittsburgh district from 5 to 11 miles west of Pittsburgh, the natural route is via Pittsburgh. The average distances in connection with the Pennsylvania to Perth Amboy are approximately 484 miles and 413 miles, respectively. For the average distances stated from points in these districts a rate of \$2.80 would yield from 5.8 mills to 7.4 mills per ton-mile.

Comparative joint rates on coal and earnings per ton-mile cited by the complainant are: From points on the Bessemer & Lake Erie in the Butler-Mercer district to Jersey City, N. J., via Erie, Pa., and the New York Central, \$2.40, 627 miles, 3.8 mills; to Newark, N. J., via Shenango, Pa., and the Erie Railroad, \$2.50, 578 miles, 4.4 mills; to Rutland, Vt., \$3.30, 579 miles, 5.7 mills; to Boston, Mass., \$3.30, 685 miles, 4.8 mills; and to Montreal, Canada, \$3.70, 623 miles, 6 mills; from Butler to Perth Amboy, Natco, and Port Murray, \$2.50 via the Clearfield route and \$2.80 via the Pennsylvania and connections, 358 to 496 miles, 5.7 to 7 mills; and from points on the Pennsylvania in the Butler-Mercer district to such points as Binghamton, Albany, and Rouses Point, N. Y., \$2.20 to \$2.90, 389 to 591 miles, 4.9 to 5.7 mills.

Complainant also cited numerous joint rates on coal applicable via various lines from the western Pennsylvania and West Virginia coal districts to Perth Amboy, Natco, and Port Murray, ranging from



\$2.40 to \$2.80 for distances from 346 miles to 510 miles, and yielding from 5 mills to 7.4 mills per ton-mile, including rates from certain points on the Pennsylvania and other lines in the Pittsburgh district west of Pittsburgh. In some instances these rates apply from the points of origin of these shipments to one or more of the destinations in question, but not over the routes of movement.

In connection with these comparisons complainant observes that coal rates from the western Pennsylvania and West Virginia districts to the Atlantic seaboard are usually made on the group basis and contends that the combination rates applied on its shipments were and are unreasonable and unduly prejudicial in comparison with the joint rates from other points ordinarily included in the same groups. In support of that contention complainant refers to our decision in *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179, in which we prescribed rates from Furth, Ark., to interstate destinations not to exceed the blanket rates from the group in which Furth is located. In that case, however, the blanket rates applied generally from points in the group to all interstate destinations. The situation in this case is somewhat different and defendants contend that with respect to these particular points a departure from the group principle of rate making is justified.

The Butler-Mercer district includes principally mines located on the Bessemer & Lake Erie, whose line extends northward through Butler in the southern part of that district to Lake Erie ports. It connects with the Buffalo, Rochester & Pittsburgh and the Pennsylvania at Butler, with the Erie at Shenango, and with the New York Central system at Erie. The Buffalo, Rochester & Pittsburgh and the Pennsylvania, with their connections, form what is called the central Pennsylvania routes from Butler to the east. From Butler and other points in western Pennsylvania served by these routes it is customary to apply the same rates to Perth Amboy, Natco, and Port Murray as to New York City terminals. As stated, the rates from Butler are \$2.50 via the Clearfield route and \$2.80 via the Pennsylvania, the latter being the group rate maintained by the Pennsylvania from contiguous districts east and south of Butler.

The routes from originating points on the Bessemer & Lake Erie in connection with the Erie at Shenango and with the New York Central at Erie form what are called the northern routes. The rates from these points over the northern routes to New York City terminals are \$2.40 via the New York Central and \$2.50 via the Erie. Perth Amboy and Port Murray are not reached by these delivering lines at New York City and hence no joint rates are maintained to those points via the northern routes. From Leesburg, Redmond, and other originating points in the Butler-Mercer group on the New

Castle-Oil City branch of the Pennsylvania that carrier maintains joint rates via western New York junctions to various points in New York and New England, but not to New York City terminals.

It will thus be observed that in respect of the Butler-Mercer district and destination points usually taking the New York rate basis there is no uniform grouping of originating or destination points under a common rate, the rate applicable depending upon the particular point of origin or destination and the routing. The distances via the central Pennsylvania routes to Perth Amboy, Natco, and Port Murray are approximately 200 miles less than those from the same points of origin via the northern routes to New York City terminals. To require the central Pennsylvania routes to apply the same rates from points on the Bessemer & Lake Erie as from Butler, or the northern routes to apply the same rates to Perth Amboy, Natco, and Port Murray as to New York City terminals, thereby effecting uniformity in the grouping and rate, would not materially increase the length of the hauls over either route but would add one or more carriers to the route. To offset these disadvantages complainant proposes a group rate of \$2.80, or 30 cents higher than that applicable from Butler via the Clearfield route or from other points on the Bessemer & Lake Erie in the Butler-Mercer district to New York City terminals via one of the northern routes and 40 cents higher than via the other.

Complainant offered no evidence as to the reasonableness of the components of the combination rates charged. It observes, however, that on June 25, 1918, each of the components was increased to the extent authorized by general order No. 28 of the Director General and contends that the through charges should not have been greater than would have resulted had the increases been computed upon the combination rates as a whole rather than upon each factor. The so-called double increase does not of itself, however, warrant a finding that the total rates were unreasonable. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 57 I. C. C., 739. Beyond showing the relative rate adjustment, substantially no evidence was adduced by complainant tending to prove that the rates were or are unduly prejudicial.

As stated, the shipments in question resulted from abnormal conditions. Complainant has made no other shipments from and to these points but states that it may desire to do so. Considering the fact that there is an adequate supply of coal at shorter-distance points from which lower rates apply, it seems unlikely that other shipments will move.

The evidence for defendants deals primarily with broad questions of policy and public interest affecting the distribution of coal rather

than with individual rates. An ample supply of coal is essential to the welfare of industries and communities in general. The proper distribution of coal requires the most efficient use of available equipment. Defendants assert that shipping coal from and to the points in question wastes transportation facilities because it passes through other districts nearer to these destinations which produce an adequate supply of coal suitable for complainant's purposes; results in the inefficient use of equipment due to the longer time required for the round trip; and impairs the carriers' ability to distribute coal from these districts to consuming territories dependent upon them. Defendants therefore contend that since the facts of record relate only to an isolated movement during a comparatively short period, there is no proper basis for requiring the establishment of joint rates or for an award of reparation.

For the Bessemer & Lake Erie it was shown that its freight tonnage consists largely of ore southbound and coal northbound; that a northbound movement of coal produced along its line is natural and proper because it promotes efficiency in the operation of its road, conserves equipment, and affords adequate markets for the producers; that no joint rates are maintained to points south of the line of the Erie Railroad extending from Shenango to New York City; and that it had not previously been requested to establish joint rates to seaboard territory via the Clearfield route. It calls attention to the fact that the northern routes to New York City terminals involve hauls over only two lines, and states that although these routes are longer than the Clearfield route from the same points of origin to complainant's plants, the latter route necessitates an unnatural southbound movement over the Bessemer & Lake Erie and transportation over five lines of railroad, resulting in greater delays in transit and greater difficulty in securing the return of equipment than when shipments move to the seaboard via the Erie. Complainant shows, however, that the Clearfield route is a well organized route over which joint rates are maintained on other kinds of traffic except coal. It was testified for the Bessemer & Lake Erie that during the year 1919 the shipments of coal over its line aggregated only 1,400 net tons to Paterson and Jersey City, N. J., and only 270,000 net tons to points east of the Genesee River in western New York, out of a total movement of over 7,500,000 tons, and further, that all the mines on its line making the shipments involved in this case are so-called wagon mines from which coal is not now being shipped.

For the Pennsylvania it was testified that coal from points in the Pittsburgh district west of Pittsburgh and from the points of origin in question on its line in the Butler-Mercer district to eastern destinations must pass through the large and congested terminals at

Pittsburgh, and for the same general reason stated above it objects to encouraging the movement from such points to Perth Amboy, Natco, and Port Murray by establishing joint rates. It contends that because of its limited trackage facilities at Butler, and the impossibility of extending them on account of topographical conditions, the difficulties of interchanging traffic with the Bessemer & Lake Erie, and excessive grades on its Butler branch, it would be impracticable to operate a through route from mines on that line to the east via Butler.

The Pennsylvania maintains joint rates to certain Atlantic seaboard points from some points on its own lines and the lines of its connections in the Pittsburgh district west of Pittsburgh, the rate from stations on its main line extending west from Pittsburgh to Collier and from stations on the Pittsburgh & West Virginia and the Pittsburgh, Chartiers & Youghiogeny to Newark, for example, 441 miles, being \$2.80; and to Atlantic City, 420 miles, \$2.90. It was stated that these rates were first established in 1915 at the request of certain coal operators on account of high prices prevailing in the east; that through error in the publication of these rates the territory of destination was made larger than was intended; that the movement thereon has not been heavy; and that the Pennsylvania Railroad attempted to withdraw them in 1916 but was prevented from doing so. The witness for that defendant expressed the view that these rates should not have been established and that they should be withdrawn.

While it appears that the rates complained of are higher, distance considered, than those generally prevailing from near-by points to the destinations in question or to points in that vicinity, over the same or other routes, the question whether the rates were unreasonable or unduly prejudicial can not be determined from that standpoint alone. Complainant was and is entitled to reasonable and non-prejudicial rates; but in determining whether the rates attacked are unreasonable or unduly prejudicial we must consider all the circumstances and conditions surrounding the traffic. It is our conclusion that we would not be warranted in requiring defendants to establish joint rates on coal from and to the points in question, and upon the facts of record we find that the combination rates applicable to these shipments are not shown to have been or to be unreasonable or unduly prejudicial. Outstanding overcharges and undercharges, together with the differences in rates due to misrouting, should be promptly adjusted.

An order dismissing the complaints will be entered.

62 L. C. C.

No. 11281.

WAUSAU BOX &amp; LUMBER COMPANY ET AL

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,  
MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted February 19, 1921. Decided May 27, 1921.*

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Charges on shavings and sawmill refuse in carloads from Wausau, Wis., to Brokaw and Rothschild, Wis., during federal control, found to have been unreasonable. Reparation awarded.

*A. E. Solie* for complainants.

*J. F. Finerty* and *J. N. Davis* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.  
By DIVISION 2:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainants, the Wausau Box & Lumber Company and the Wisconsin Box Company, are corporations engaged in the manufacture of boxes, box shooks, and lumber at Wausau, Wis. By complaint, filed February 28, 1920, they allege that the minimum charge of \$15 per car collected on 45 carloads of shavings and sawmill refuse shipped from Wausau to Brokaw and Rothschild, Wis., between June 25, and August 5, 1918, were unjust and unreasonable to the extent that they exceeded charges which would have accrued at the rates contemporaneously in effect. Reparation only is sought. Except as otherwise noted rates are stated in cents per 100 pounds.

Brokaw and Rothschild are on the Wisconsin Valley division of the defendant carrier, 5.7 miles north and 5.4 miles south, respectively, of Wausau. Prior to June 25, 1918, commodity rates of 2.5 cents applied on shavings and 2 cents on sawmill refuse from Wausau to both Brokaw and Rothschild. Following general order No. 28 of the Director General of Railroads, these rates were increased on June 25, 1918, to 3 cents and 2.5 cents, respectively. Contemporaneously, under authority of the same order, as amended, a minimum line-haul charge of \$15 per car was established on all commodities except brick, cement, coal, coke, logs, ore, sand, gravel, and stone, broken, crushed, or ground. On August 5, 1918, saw-

mill refuse and shavings were excluded from the application of the \$15 minimum car charge.

The shipments moved over the line of the defendant carrier and consisted of 10 cars of sawmill refuse from Wausau to Rothschild, and 24 cars of shavings and 11 cars of sawmill refuse, from Wausau to Brokaw. Charges were collected at the applicable minimum charge of \$15 per car, which was equivalent to increases over the charges applicable under the rates in effect on June 24, 1918, of 78.5 per cent on the sawmill refuse to Rothschild, 31.6 per cent on the sawmill refuse to Brokaw, and 142 per cent on the shavings to Brokaw. Based on the rates in effect when the shipments moved, the charges would have averaged per car as follows: \$10.50 on the sawmill refuse to Rothschild and \$7.42 and \$14.25 on the shavings and sawmill refuse, respectively, to Brokaw. Defendants contemporaneously maintained a charge of \$8 per car on a 40,000-pound car of sand, gravel, or crushed stone for a distance of 5 miles, and \$10 per car for a distance of 10 miles; also a charge of \$9 per car on a carload of logs weighing 60,000 pounds for a distance of 10 miles.

Defendants submitted in evidence an exhibit purporting to show that the cost of transporting a car of sawmill refuse from Wausau to Brokaw was \$20.74 in August, 1918. This exhibit is of little probative value because of faulty methods used in its construction. For example, the time allowed at Wausau for switching, 1 hour and 15 minutes, covered location of empty car in the yard, its movement to and placement at the industry, and the switching out and return of a loaded car to the yard. If the movements at complainants' plants were made individually as the estimate presupposes, the result would be correct, if the time allotment were properly estimated. But it is shown that defendants' switch locomotive performs service at half a dozen other industries adjacent to each of the plants of complainants. Moreover, this locomotive delivers logs and switches out the manufactured product of complainants' plants in addition to the by-products involved in this case. From these facts it appears that the assignment of costs at Wausau is clearly excessive. The estimate also includes a per diem charge of \$7.68. It is obviously improper to assess a per diem charge as an item of cost in addition to a charge for maintenance since the cars used were the defendant carrier's property upon which no per diem charge accrued. Moreover a considerable portion of the delay to the shipments is said to have been at the destination industry where demurrage was handled under an average agreement. Even if per diem were paid on the cars, it could not be included as a cost figure for detention, as that would be met by the payment of demurrage.

We find that the charges assessed on complainants' shipments were unreasonable to the extent that they exceeded the charges which would have accrued at the rates per 100 pounds contemporaneously in effect, and actual weight, subject to the carload minimum weight; that complainants made the shipments as described and paid and bore the charges herein found unreasonable; that they have been damaged thereby to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

COMMISSIONER DANIELS dissents.

62 I. C. C.

No. 11728.

UNITED PAPERBOARD COMPANY, INCORPORATED,  
v.  
NEW YORK CENTRAL RAILROAD COMPANY, DIRECTOR  
GENERAL, AS AGENT, ET AL.

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*Submitted February 15, 1921. Decided May 20, 1921.*

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Rate on wood pulp, in carloads, from Lockport, N. Y., to Thomson, N. Y., during federal control, found not unreasonable or unduly prejudicial. Complaint dismissed.

*R. L. Stover* for complainant.

*Parker McCollester* for defendants.

*Alexander M. Bull* for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing box board and wood-fiber products, with principal office at New York, N. Y., alleges that the rate of 22.5 cents charged by defendants on 13 carloads of wood pulp shipped during October, November, and December, 1918, from Lockport, N. Y., to Thomson, N. Y., was unreasonable and unduly prejudicial. We are asked to award reparation. Rates are stated in cents per 100 pounds.

Lockport is served by the New York Central and the Erie. The shipments moved as routed by complainant over the New York Central, Boston & Maine, and Greenwich & Johnsonville, about 820 miles. Charges were collected at the applicable combination rate of 22.5 cents, composed of the sixth-class rate of 17 cents from Lockport to Johnsonville, N. Y., and a commodity rate of 5.5 cents beyond. On October 20, 1919, a joint rate of 20 cents was established from Lockport to Thomson.

Complainant offered no evidence that the rate charged was either unreasonable or unduly prejudicial, except a showing that a rate of 20 cents contemporaneously applied from Lockport to Boston and other points in Massachusetts, to which Thomson is not intermediate, and that the rate to Thomson was subsequently reduced to that basis.



Defendants' witness testified that the 20-cent rate to Boston and the other Massachusetts points was established to meet the rate of the Erie and its eastern connections.

We find that the rate assailed was not unreasonable or unduly prejudicial. The complaint will be dismissed.

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No. 11715.

UNITED PAPERBOARD COMPANY, INCORPORATED,

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted December 13, 1920. Decided May 20, 1921.*

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Rate on baled straw, in carloads, from Oldenburg, Ill., to Rockport, Ind., found unreasonable. Reparation awarded.

*R. L. Stover* for complainant.

*Claudian B. Northrop* for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, MITCHISON, AND EASTMAN.

BY DIVISION 8:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing paper box board, with its principal office at New York, N. Y., by complaint seasonably filed alleges that the rate of 15 cents charged on 17 carloads of baled straw from Oldenburg, Ill., to Rockport, Ind., during November and December, 1913, and January, 1914, was unreasonable to the extent that it exceeded the lower combination of rates contemporaneously in effect. Reparation only is asked. Rates are stated in cents per 100 pounds, unless otherwise indicated.

The shipments, aggregating 611,200 pounds, moved over the Chicago, Peoria & St. Louis to East St. Louis, Ill., and the Southern beyond. A joint fifth-class rate of 15 cents was applicable. The charges collected, \$906.15, resulted in an undercharge of \$10.65. The intermediate rates then in effect were 3.7 cents from Oldenburg to East St. Louis, minimum 20,000 pounds, and \$13.50 per car beyond. The fourth section departure was protected by appropriate application, and was subsequently corrected by making the joint fifth-class rate inapplicable.

The Southern filed application on our special docket for authority to make reparation to the basis of the aggregate of the intermediate rates, but the receivers of the Chicago, Peoria & St. Louis declined to join therein, stating that they had no funds with which to pay its proportionate share. A telegram to the same effect was received in evidence at the hearing. Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. Our orders for reparation require payment of the sum found due and run against all defendants. *Riverside Mills v. A. & S. Steamboat Co.*, 49 I. C. C., 501.

We find that the rate assailed was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$450.51, with interest. Collection of the undercharge should be waived.

An appropriate order will be entered.

62 I. C. C.

No. 11480.

BEST CLYMER MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL  
RAILROAD COMPANY, ET AL.

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*Submitted January 3, 1921. Decided May 20, 1921.*

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Rates on sorghum sirup, in barrels, in carloads, from Corinth, Calhoun City, and Lexington, Miss., to St. Louis, Mo., found unreasonable. Reasonable rate from Lexington prescribed and reparation awarded.

*Thomas Bond* for complainant.

*John F. Finerty, A. P. Humburg, and John C. Brooke* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing sorghum sirup, with principal office at St. Louis, Mo., alleges that the rates charged on five carloads of sorghum sirup, in barrels, shipped to St. Louis during November and December, 1918, one each from Corinth and Lexington and three from Calhoun City, all in the state of Mississippi, were unreasonable and unduly prejudicial to the extent that they exceeded 32.5 cents per 100 pounds, and in violation of section 4 of the act to regulate commerce. We are asked to award reparation and to establish a reasonable rate from Lexington. Rates are stated in cents per 100 pounds and do not include the general increases of 1920.

Corinth is on the Mobile & Ohio 67 miles north of Okolona, Miss.; Calhoun City is the terminus of the Mobile & Ohio branch extending southwesterly from Okolona; and Lexington is on a branch of the Yazoo & Mississippi Valley, about 13 miles west of the main-line junction at Durant, Miss.

The shipments, details of which are shown in the following table, moved over lines then under federal control.

Point of origin.	Distance.	Carload weight.	Freight charges collected.	Applied rate. <sup>1</sup>	Ton-mile earnings at applied rate.	Ton-mile earnings at 32.5-cent rate.
	<i>Miles.</i>	<i>Pounds.</i>		<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Corinth, Miss.....	328	27, 140	\$ 183. 34	56. 5	34. 5	\$ 19. 8
Lexington, Miss.....	469	36, 545	\$ 282. 16	80	34. 1	14. 9
Calhoun City, Miss.....	434	40, 000	288. 00	64	29. 5	\$ 12. 8
Do.....	434	30, 200	250. 88			
Do.....	434	41, 900	268. 16			

<sup>1</sup> Fifth-class, minimum 30,000 pounds, applicable.

<sup>2</sup> Undercharged.

<sup>3</sup> Commodity, minimum 30,000 pounds, established May 1, 1919.

When the shipments moved a commodity rate of 32.5 cents applied from many other points in Mississippi. Complainant compares the ton-mile earnings under the rates applicable and under the 32.5-cent rate, and shows that the latter, for distances from 378 to 621 miles, yields from 17.2 to 10.4 mills per ton-mile. Complainant also refers to rates to St. Louis on sorghum sirup, in carloads, of 27.5 cents from Pine Bluff, Ark., 387 miles; 29 cents from Fort Smith, Ark., Monroe, La., and Alexandria, La., 416, 501, and 599 miles, respectively; and 31 cents from Franklin, La., 727 miles.

Defendants' witness testifies that the 32.5-cent rate was published because of competitive conditions and would have been established from these points upon request, accompanied by a showing that there would be a movement. These points are in the cane-producing section of Mississippi and the volume of movement therefrom is about the same as from points which had the 32.5-cent rate. Defendant carriers are willing to establish the 32.5-cent rate from Lexington.

A combination rate of 51.5 cents contemporaneously applied from Lexington via Durant, but it is not shown that the shipment from Lexington moved over that route.

We find that the rates assailed were unreasonable to the extent that they exceeded 32.5 cents per 100 pounds and that the present rate from Lexington to St. Louis is, and for the future will be unreasonable to the extent that it exceeds 32.5 cents per 100 pounds, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$570.69, with interest. Collection of the outstanding undercharges should be waived. We are not authorized to order refund of war taxes.

The record does not support a finding of undue prejudice.

An appropriate order will be entered.

62 I. C. C.

No. 10500.

CORPORATION COMMISSION OF NORTH CAROLINA

v.

DIRECTOR GENERAL, ATLANTIC COAST LINE  
RAILROAD COMPANY, ET AL.

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No. 10515.

RALEIGH CHAMBER OF COMMERCE, INCORPORATED,  
ET AL.

v.

DIRECTOR GENERAL, SEABOARD AIR LINE RAILWAY  
COMPANY, ET AL.

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*Submitted September 30, 1920. Decided June 7, 1921.*

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Upon further argument, findings in 57 I. C. C., 523, modified. Maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, on the one hand, and eastern ports and interior eastern points, on the other.

*Wm. T. Lee, Geo. P. Pell, and A. J. Maxwell*, commissioners, and *Edgar Watkins*, attorney, for Corporation Commission of North Carolina; and *J. H. Fishback, D. Lynch Younger, and Albert L. Cox* for commercial organizations of various North Carolina cities.

*F. R. McNinch* for Charlotte Shippers & Manufacturers Association; *Alexander Forward*, commissioner, and *Mason Manghum*, attorney, for State Corporation Commission of Virginia; and *H. V. C. Wade* for Norfolk Chamber of Commerce, interveners.

*Charles J. Rixey, jr., and Henry Thurtell* for defendants.

REPORT OF THE COMMISSION ON FURTHER ARGUMENT.

EASTMAN, *Commissioner*:

In our original report, 57 I. C. C., 523, we dealt with a situation which was thus briefly described:

Generally speaking, the class rates southbound from a large territory covering the central and eastern portions of North Carolina, represented by the complaining cities, to points in states south and west thereof, except a portion of the state of Georgia, are the same as from Richmond, Petersburg, Norfolk, Portsmouth, Suffolk, Lynchburg, Roanoke, Danville, Emporia, and other points of less importance in southern Virginia. To certain points in northern Georgia, in what is known as Atlanta territory, the North Carolina rates are lower

62 I. C. C.

than the Virginia cities rates by  $8\frac{1}{2}$  or 9 cents, first class. Just south of Atlanta, in what is known as Columbus territory, there is a similar differential of 2½ cents. Atlanta territory is represented on the map [page 524] by triple lines, Columbus territory by double lines. Northbound these differentials do not exist, and from all the southern territory the rates to the North Carolina cities are, in general, the same as or higher than the rates to the Virginia cities.

Stating the situation concisely, on traffic to and from the south the North Carolina cities are either grouped with or have higher rates than the Virginia cities, except to the restricted differential territory in northern Georgia, while, as will later appear, there is far from being any similar and compensating grouping in the case of traffic to and from the north.

Upon petition of the State Corporation Commission of Virginia and certain defendants operating in southern territory the case was, on August 23, 1920, reopened for further argument, and the order was indefinitely postponed. The Virginia commission was made a party and permitted to participate in the reargument.

The case is divisible into two parts: (1) The southern adjustment, having to do with the rates to and from points in South Carolina, Georgia, Florida, Alabama, Mississippi, and Tennessee; and (2) the northern adjustment, having to do with the rates to and from points in New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware. It was so divided in our original report.

Rates are stated in amounts per 100 pounds and, unless otherwise specified, are those now in effect. North Carolina zones 1, 2, 3, and 4, referred to herein, are described in the appendix to our original report.

#### THE SOUTHERN ADJUSTMENT.

In our original report, we said, at page 535:

It is not claimed that there are any transportation or commercial conditions which justify the blanketing of North Carolina points with Virginia cities in the southern rate adjustment in disregard of the element of distance. Upon only one theory could justification be offered, and that is that the Virginia cities rates are held down by circumstances beyond defendants' control, such as water or carrier competition. No water lines operate between Virginia cities and south Atlantic ports, and the only claim of this nature which defendants have seriously made is that under the fourth section Virginia cities rates may not exceed the rail-and-water rate from Baltimore, which applies through Norfolk as well as through south Atlantic ports. Inasmuch as this Baltimore rate is now  $16\frac{1}{2}$  cents higher than the Virginia cities rates at Atlanta, and generally higher at other points, the differential diminishing as distance increases, it is apparent that substantial leeway exists under this restriction, even if the claim be regarded as valid.

This finding of fact was in no way questioned upon reargument. We also said at pages 535-536:

One method of meeting the situation would be the establishment of a uniform distance scale, applying locally between the Virginia cities and North Carolina

territory, on the one hand, and points in the southeast, on the other. We hesitate, however, to adopt this method because of the possible far-reaching consequences of the introduction of such a scale throughout the southern territory. The determination of the general level of a distance scale, of the percentage relationships of its various classes, and of the rates of progression with increasing distance are questions of importance and difficulty which require careful study and the consideration of data which are not available in the present record. Sufficient notice has not been given or opportunity afforded for the hearing of the many and diverse interests which would be affected by and concerned in the establishment of such a scale. Moreover, it would be necessary to consider its possible effect upon traffic to and from western points passing through the Virginia gateways.

Objections, however, to the correction of the southern adjustment by the immediate adoption of a distance scale should not, we think, stand in the way of affording such relief to complainants as the present record permits. The complaining cities have long been subjected to the burden of undue prejudice and may fairly ask that this burden be removed or lightened without delay by such means as are presently available. This can be done, in our opinion, by prescribing a differential relationship which will result in a more equitable rate adjustment than that now existing.

The reargument has not impaired the force of the objections to the immediate adoption of distance rates, nor the force of the considerations which impel such present relief to the complaining cities as the record permits.

We found that the class-rate adjustment attacked was unduly prejudicial to North Carolina points in zones 1, 2, 3, and 4 and unduly preferential of Richmond and Norfolk, Va., to the extent that the first-class rates from or to the North Carolina points exceeded rates which were lower than the first-class rates from or to Norfolk or Richmond by the following differentials:

	Cents.
To or from all points in South Carolina, Georgia, and Tennessee on or east of a line drawn through Jellicoe and Knoxville, Tenn., Franklin, N. C., Elberton and Augusta, Ga.; thence along the line of the Charleston & Western Carolina Railway to Port Royal, S. C.-----	30
To or from all points in South Carolina, Georgia, Alabama, and Tennessee west of the line above described and on, east, or north of a line drawn from Gallatin to Murfreesboro, Tenn.; thence along the line of the Nashville, Chattanooga & St. Louis Railway to Stevenson, Ala.; thence through Fort Payne, Ala., and LaGrange, Ga., to Americus, Ga.; thence along the line of the Seaboard Air Line to Cordele, Ga.; thence along the line of the Atlanta, Birmingham & Atlantic Railway to Brunswick, Ga.-----	20
To or from all points in Tennessee, Mississippi, Alabama, and Florida west or south of the line next above described-----	10

and to the extent that the rates from or to the North Carolina points on the other classes exceeded rates which were lower than the corresponding class rates from or to Norfolk or Richmond by differentials which were the same percentage of the first-class differentials prescribed as the rates on the other classes from or to Norfolk or Richmond were of the corresponding first-class rates.

We further stated that the record was not sufficiently complete to enable us to prescribe a commodity-rate adjustment, but that, in general, the commodity rates from or to the North Carolina points should be lower than the commodity rates from or to Norfolk or Richmond by minimum differentials which should be the same percentage of the differentials prescribed between the rates on the class under which the commodity is rated as the commodity rate bears to the class rate. We said that this was not to be understood as authority for placing on the class-rate basis from or to North Carolina points such articles as then took commodity rates from or to those points and class rates from or to Norfolk and Richmond, or vice versa.

We issued an order in conformity with our findings with respect to class rates and said that the defendants would be expected to revise their commodity-rate adjustment promptly in accordance with the views expressed.

Our findings did not involve all the Virginia cities, but were restricted to the relationship between North Carolina points and Richmond and Norfolk. We gave the following explanation of this restriction at pages 536-537:

Complainants' evidence was largely directed to this relationship, and the record indicates that it is in competition with these two Virginia points that the North Carolina cities chiefly feel the burden of the present adjustment. Moreover, differentials which are just and reasonable, so far as Richmond and Norfolk are concerned, would not be equitable in their application to certain of the other Virginia cities. For the purposes of speedy relief we think that the finding may properly be limited to Richmond and Norfolk and that adjustments of the rates to and from other Virginia cities may for the present be left to the initiative of defendants.

No sufficient reason has been shown upon reargument for reaching a different conclusion.

On August 26, 1920, all rates between Richmond, Norfolk, and North Carolina points on the one hand, and points in South Carolina and the southeast, on the other, were increased 25 per cent under our authorization of July 29, 1920. If rates had been established in accordance with our order herein, this increase would have resulted in changing the differentials of 30, 20, and 10 cents to 37.5, 25, and 12.5 cents, respectively.

Defendants concede that North Carolina points should have an advantage in rates over Richmond and Norfolk reflecting their advantage in distance, but claim that the differentials which we prescribed are too large and would have incongruous and indefensible results. They point out that in some instances the distance from a North Carolina point is greater than from Richmond to the same destination. Excluding Tennessee destinations for the present, this is true in but a few instances and only of North Carolina points in the



extreme eastern part of zone 1. Thus Bridgeton, N. C., is 1 mile farther than Richmond from such typical points as Rome and Atlanta, Ga., Anniston and Montgomery, Ala., and Meridian, Miss., and 3 miles farther from Greenville, S. C., and Toccoa, Ga. Warsaw, N. C., is 2 miles farther from Toccoa. To Huntsville, Ala., the distances from Warsaw, Bridgeton, Grimesland, Parmele, and Hobgood, N. C., are from 4 to 46 miles greater than the distance from Richmond. However, the direct route to Huntsville from Richmond and from most North Carolina points is by way of the Southern through Knoxville and Chattanooga, Tenn., and Huntsville may thus be classed with points in Tennessee, which we shall consider later. Generally the distance is less from Richmond than from Norfolk and in no instance, again excluding points in Tennessee, does it appear that it is less from Norfolk than from any North Carolina point. From Bridgeton to the destinations named above the distances are from 28 to 64 miles less than from Norfolk, and from Warsaw the distance to Toccoa is 65 miles less. Norfolk and Richmond take the same rates to and from all points in the southeast, and in determining their proper relationship with North Carolina points the distances from both must be considered. Furthermore, while to many points there is no substantial difference between the distances from Richmond and the distances from such towns in the extreme eastern part of zone 1 as Hobgood, Parmele, Washington, Greenville, and Bridgeton, to many other points these North Carolina towns have a substantial advantage. For example, to Augusta, Ga., the distance favors Bridgeton by 99 miles.

Defendants argue that the adoption of our differentials would result in lower rates from North Carolina points to South Carolina points than to intermediate points in North Carolina. They submit the following statement:

From—	To—	Distance.	Rate.
		Miles.	Cents.
Grimesland, N. C.....	Maxton, N. C.....	150	97
Do.....	Bennettsville, S. C.....		82.5
Hobgood, N. C.....	Hamlet, N. C.....	790	106
Do.....	Cheraw, S. C.....		78
Greenville, N. C.....	Gastonia, N. C.....	260	108.5
Do.....	Blacksburg, S. C.....		82.5
Henderson, N. C.....	Monroe, N. C.....	198	99
Do.....	Catawba, S. C.....		87.5
Greensboro, N. C.....	Charlotte, N. C.....	98	100
Do.....	Rock Hill, S. C.....		87.5

In each case the North Carolina destination is intermediate to the South Carolina point. This statement, however, rests upon the assumption that our differentials would be established solely by reducing the North Carolina rates, although defendants have insisted throughout this proceeding that the Virginia cities rates are too low and have submitted evidence to that effect.

To prove that the adjustment which we prescribed would result in lower rates for similar distances from North Carolina than from South Carolina points to South Carolina destinations, assuming no increases in the Virginia cities rates, defendants presented a statement showing the existing first-class rates from Richmond and from Charleston, S. C., as compared with first-class rates from Raleigh and Fayetteville, N. C., made lower than the rates from Richmond by our differentials. This statement, with ton-mile earnings added, is here reproduced:

To—	From Richmond.			From Raleigh.			From Fayetteville.			From Charleston.		
	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Catawba, S. C.	316	126	7.9	174	87.5	10.1	140	87.5	12.5	168	103	12.3
Chester, S. C.	326	125	7.7	194	87.5	9	159	87.5	11	194	102	10.6
Charlisle, S. C.	342	131.5	7.7	211	94	8.9	176	94	10.7	182	103	11.3
Clinton, S. C.	372	131.5	7.1	249	94	7.8	205	94	9.1	195	108	11.1
Greenwood, S. C.	400	131.5	6.6	268	94	7	232	94	8.1	214	106	10.1
Abbeville, S. C.	415	131.5	6.3	288	94	6.6	248	94	7.6	236	111.5	9.4
Darlington, S. C.	268	126	8.5	171	87.5	10.2	83	87.5	21.1	111	87.5	15.5
Florence, S. C.	297	125	8.4	181	87.5	9.7	83	87.5	21.1	101	86.5	17.1
Hartsville, S. C.	316	126	7.9	159	87.5	11	110	87.5	15.9	127	86.5	14.1
Columbia, S. C.	360	119	6.6	202	87.5	8.1	165	87.5	9.9	129	80	12.4

According all due weight to the principle that ton-mile earnings should decrease as distance increases, the rates in the above table from Charleston appear high by comparison with the corresponding rates from Richmond, and the rates from Fayetteville and Raleigh do not in general appear low. If rates and distances from Norfolk instead of those from Richmond were used, the showing would be still more favorable to the North Carolina rates. For example, Norfolk is 369 miles from Chester, and the ton-mile earnings at the rate of \$1.25 are 6.8 cents. For the Norfolk distance of 415 miles the rate of \$1.815 to Clinton earns 6.3 cents.

Defendants also measure our differentials by the spreads which would result from the distance scale which they proposed in *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, for application between Meridian, Miss., and points in Alabama, and which they propose in this case for application between North Carolina and South Carolina. The first-class rates, increased by the 25 per cent authorized for the southern group in *Increased Rates, 1920*, 58 I. C. C., 220, are reproduced in Appendix No. 1 hereto. In the *Meridian Case* we did not approve this proposed scale, but prescribed a scale which in general is somewhat lower. Under the circumstances it may be assumed that the rate progressions in defendants' scale for the distances involved are not too small, and that the spreads between the North Carolina rates and the Richmond and Norfolk rates which would result from its application are not excessive. It must be borne in mind, however, that the adjustment

prescribed in our original report was in the nature of a group adjustment and that it is fairer to measure such rates by average distances. Necessarily points on the farther edge of a group have more favorable rates, relatively, than under a distance scale, and points on the nearer edge have less favorable rates.

Defendants' comparisons with the spreads which would result from the application of their proposed scale are offered to prove that our differentials are too great. A fair illustration is the following:

The distance from Wilson to Toccoa is 381 miles over a two-line haul. The first-class rates provided by the scale for a two-line haul of 381 miles is \$1.69. The distance from Richmond is 456 miles. The rate provided for a one-line haul of 456 miles is \$1.675. Yet the Commission has directed the carriers in this case to apply from Wilson over the two-line haul of 381 miles a rate 37.5 cents less than is applied from Richmond and Norfolk.

But these comparisons are vulnerable in certain respects. For their purposes defendants selected the following points in North Carolina: Hobgood, Parmele, Warsaw, Weldon, Henderson, Durham, Goldsboro, Bridgeton, Wilson, Fayetteville, Grimesland, Raleigh, Acme, and Lumberton. Of these Weldon lies north of zone 1 and its rates are not in issue; Hobgood, Parmele, Bridgeton, Wilson, and Grimesland are in the extreme eastern part of zone 1; and the distances from each of the 13 points, excepting Fayetteville, Acme, and Lumberton, are greater than the average distance from the whole North Carolina group. On the other hand, defendants use the distances from Richmond in their comparisons, although in general they are less than the distances from Norfolk, and in many cases substantially so. It will also be observed that the distance rates reproduced in Appendix No. 1 are for single-line application only, and that for joint-line hauls defendants' proposed first-class rates are in each instance 12.5 cents higher. In their comparisons defendants use the joint-line rates where the hauls are over more than one line; but in their present rates defendants do not differentiate between single and joint line hauls, nor do they propose to do so to and from the Virginia cities. Under the circumstances it would be neither practicable nor just to make such a distinction in prescribing group differentials for the removal of the undue prejudice which is in issue.

As we have stated, inconsistencies are inevitable in any group adjustment. These might be eliminated by the use of a distance scale, but for the reasons given in our original report we do not deem it advisable to attempt such a scale in this proceeding. The inconsistencies might be minimized by resort to a large number of small groups; but this would be a less simple way of accomplishing results approaching those of a distance scale. To some parts of the southeast the distance from a North Carolina point may be little less than the average distance from Richmond and Norfolk, while to other

sections the difference may be considerable. Thus, from Warsaw the distance to Elberton, Ga., is 383 miles, and the average distance from Richmond and Norfolk 480 miles. The spread under defendants' scale would be 14 cents. But to Darlington, S. C., the respective distances are 174 and 295 miles, and the spread would be 22 cents. To Greenville, S. C., the distance from Bridgeton is 158 miles; the average distance from Richmond and Norfolk 162.5 miles; and the spread 4.5 cents. To Newberry, S. C., the distance from Bridgeton is 147 miles; the average distance from the two Virginia cities 170.5 miles; and the spread 28.5 cents.

That the present situation is unjust to the North Carolina cities is conceded both by the defendants and by the intervener. The following table illustrates the inequities with which the rate structure is replete:

From—	To—	Route.	Distance.	First-class rate.	Ton-mile earnings.
			<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Richmond, Va.....	Seneca, S. C.....	Southern.....	430	151.5	6.1
High Point, N. C.....	do.....	do.....	225	131.5	11.7
Richmond, Va.....	Blacksburg, S. C.....	do.....	329	125	7.6
Salisbury, N. C.....	Toccoa, Ga.....	do.....	219	134.5	12.3
Norfolk, Va.....	Fairfax, S. C.....	Seaboard	453	133	8.9
		Air Line.			
Sanford, N. C.....	do.....	do.....	237	133	11.2
Norfolk, Va.....	Catawba, S. C.....	do.....	348	125	7.2
Raleigh, N. C.....	Elberton, Ga.....	do.....	314	134.5	8.6
Richmond, Va.....	Mullins, S. C.....	do.....	306	125	8.4
		Atlantic Coast Line.			
Rocky Mount, N. C.....	do.....	do.....	176	130	14.8

As previously stated, in criticizing the plan of our original report, defendants assume that the differentials would be made effective solely by reducing the rates to and from the North Carolina points, although their claim has always been that the Virginia cities rates are too low. They then allege that we found the rates attacked not unreasonable and that no material reductions in the North Carolina rates should therefore be required. If this were so, the differentials could be established by raising the Virginia cities rates. But what we actually found in our original report was that " \* \* \* the record does not warrant a conclusion that the rates are unreasonable under present conditions except in some cases between North Carolina and South Carolina points." Earlier in the report we said at page 530:

It is made evident by defendants' comparisons that the average rates from North Carolina to South Carolina are not higher than many other southern rates carried in the tariffs, but in some instances the rates for the shorter distances are clearly excessive. For example, from Fayetteville, N. C., to Camden, S. C., the first-class rate is \$1.02½ for a distance of 136 miles; and from Aberdeen, N. C., a point near the South Carolina state line, the rate to McColl, S. C., 42 miles distant, is 90 cents.

Upon further analysis of the rates from North Carolina to South Carolina and the southeast, we are convinced that more are unreasonable than our original report would indicate. While the evidence tends to show that the rates from Richmond and Norfolk are in some instances too low, yet after making due allowance for this fact, many of the North Carolina rates appear substantially out of line. In the following table illustrative first-class rates from Richmond, Norfolk, and North Carolina points are compared with the first-class rates prescribed in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, for application for like distances between certain points in the southwest, increased by the 25 per cent under general order No. 28 of the Director General of Railroads and by the 25 per cent authorized in *Increased Rates, 1920, supra*, for the southern group. An increase of 35 per cent was authorized in the southwest. Without undertaking to say that rates in Carolina territory ought in all cases to reach the level of this scale, certainly they should average no higher.

From—	To—	Distance.	Rate.	Rate under M.-S. W. scale.
		Miles.	Cents.	Cents.
Richmond, Va.	Blacksburg, S. C.	329	125	150.5
Do.	Spartanburg, S. C.	358	131.5	164.5
Do.	Seneca, S. C.	430	131.5	155.5
Do.	Elberton, Ga.	471	145.5	187.5
Do.	Atlanta, Ga.	542	155.5	202
Norfolk, Va.	Cheraw, S. C.	289	115.5	150
Do.	Columbia, S. C.	377	119	169
Do.	Savannah, Ga.	517	119	197
Monroe, N. C.	Catawba, S. C.	25	52	45.5
Do.	Chester, S. C.	45	64.5	55
Charlotte, N. C.	Blacksburg, S. C.	46	59.5	57
Do.	Spartanburg, S. C.	76	73	71.5
Sanford, N. C.	McBee, S. C.	101	122	83
Salisbury, N. C.	Spartanburg, S. C.	120	103	90
Warsaw, N. C.	Mullins, S. C.	132	112.5	97
Salisbury, N. C.	Greenville, S. C.	151	112.5	108
High Point, N. C.	do.	185	117.5	117.5
Goldboro, N. C.	Florence, S. C.	194	122	120.5
Wilson, N. C.	do.	219	122	127
High Point, N. C.	Spartanburg, S. C.	154	112.5	108
Monroe, N. C.	Elberton, Ga.	185	134.5	111.5
Sanford, N. C.	Carlisle, S. C.	189	131.5	111.5
Greensboro, N. C.	Greenville, S. C.	201	120.5	124
Parmele, N. C.	Florence, S. C.	205	133	124
Sanford, N. C.	Denmark, S. C.	211	133	127
Salisbury, N. C.	Toccoa, Ga.	219	134.5	127
Greensboro, N. C.	do.	268	134.5	145.5
Henderson, N. C.	Fairfax, S. C.	323	133	159.5
Do.	Calhoun Falls, S. C.	341	131.5	164.5
Norlina, N. C.	Elberton, Ga.	373	134.5	168.5
Norfolk, Va.	Calhoun Falls, S. C.	471	131.5	187.5
Monroe, N. C.	Athens, Ga.	200	145	120.5
Norlina, N. C.	do.	408	145	178
Monroe, N. C.	Atlanta, Ga.	272	145	145.5
Norlina, N. C.	do.	480	145	192.5
Salisbury, N. C.	Gainesville, Ga.	258	145	139.5
Greensboro, N. C.	do.	307	145	155
Salisbury, N. C.	Atlanta, Ga.	312	145	155
Greensboro, N. C.	do.	361	145	169
Norfolk, Va.	Elberton, Ga.	488	145.5	192.5
Charlotte, N. C.	Anniston, Ala.	372	136.5	169
Richmond, Va.	do.	654	167.5	226
Charlotte, N. C.	Birmingham, Ala.	432	126.5	183
Richmond, Va.	do.	717	167.5	235.5

<sup>1</sup> Memphis-Southwestern scale, which is limited to 600 miles, extended at average rate of progression for last 100 miles.

In *Rates to and from Nashville*, 61 I. C. C., 308, we prescribed the following maximum first-class rates:

From—	To—	Distance.	First-class rates.
		<i>Miles.</i>	<i>Cents.</i>
Cincinnati, Ohio.....	Nashville, Tenn.....	296	115
Evansville, Ind.....	do.....	158	94
Henderson, Ky.....	do.....	146	90
Memphis, Tenn.....	do.....	280	110
Mobile, Ala.....	do.....	473	180
Atlanta, Ga.....	Cincinnati, Ohio.....	474	180
Birmingham, Ala.....	Henderson, Ky.....	354	145
Atlanta, Ga.....	Nashville, Tenn.....	287	115
Birmingham, Ala.....	do.....	208	100
Atlanta, Ga.....	Memphis, Tenn.....	418	150
Birmingham, Ala.....	do.....	251	112
Chattanooga, Tenn.....	Nashville, Tenn.....	151	90

The hauls between the points named are within southeastern territory. It will be observed that in general these rates are relatively higher than the Richmond and Norfolk rates and relatively lower than the North Carolina rates shown in the preceding table.

The following statement illustrates the spreads in favor of typical North Carolina points which would result from the application of defendant's proposed scale, using the average distances from Richmond and Norfolk:

To—	From Fayetteville.	From Raleigh.	From Henderson.	From Parmele.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Dillon, S. C.....	68.5	34.5	17	17
Charav, S. C.....	25	28.5	26	10.5
Chester, S. C.....	32.5	23	17	7.5
Greenville, S. C.....	28	25	18.5	9.5
Allendale, S. C.....	31	25	18.5	12.5
Augusta, Ga.....	34.5	22.5	22	14
Elberton, Ga.....	30	25	18.5	8
Toccoa, Ga.....	25	22	19	6.5
Macon, Ga.....	33.5	24	14.5	14.5
Atlanta, Ga.....	29	24.5	18	6.5

The average distances from Richmond and Norfolk to Macon and Atlanta and the distance from Parmele to Atlanta are in excess of 500 miles, and for these we have extended defendants' scale at the average rate of progression for the last 100 miles. It will be noted that Fayetteville's advantage over Richmond and Norfolk is greater in the eastern part of South Carolina than in the western. On the other hand, the advantage of a point in the western part of the North Carolina group, such as Charlotte or High Point, is greater in the western part of South Carolina than in the eastern.

Turning to the Tennessee situation, traffic between Virginia or North Carolina cities and Tennessee points for the most part moves over routes different from those traversed by traffic between such

cities and points in South Carolina or other states in the southeast. The former traffic moves generally east and west, the latter north and south. Defendants make the following comparison of the average short-line distances to a group composed of Knoxville, Johnson City, Morristown, and Bristol, the more important points in the extreme eastern part of Tennessee:

From—	Distance.	From—	Distance.
	<i>Miles.</i>		<i>Miles.</i>
Richmond, Va.....	339	Durham, N. C.....	331
Norfolk, Va.....	466	Raleigh, N. C.....	406
Bridgeton, N. C.....	516	Goldboro, N. C.....	455
Grimesland, N. C.....	503	Warsaw, N. C.....	489
Farmale, N. C.....	509	Acme, N. C.....	484
Wilson, N. C.....	458	Fayetteville, N. C.....	422
Henderson, N. C.....	426	Lumberton, N. C.....	416

All of the North Carolina points named, except Henderson, Durham, Raleigh, and Fayetteville, lie east of a line drawn through Henderson, Raleigh, Fayetteville, and Pembroke, and defendants argue that, based on relative distances, points east of that line are not entitled to lower rates than Richmond and Norfolk to Tennessee points, while from points on that line the first-class rates should not be more than 15 cents lower than the rates from Richmond and Norfolk. This figure they reach by the application of their scale to an average distance of 500 miles from Richmond and Norfolk to Knoxville and an estimated average distance of 410 miles from points on the Henderson-Pembroke line to Knoxville.

Defendant's use of the four Tennessee points named for purposes of comparison is open to criticism. Bristol is on the extreme northeastern edge of Tennessee and is not representative of any substantial portion of that state. It is the point as to which the North Carolina towns are most unfavorably situated in comparison with the Virginia cities. From the North Carolina towns to Johnson City defendants have used the circuitous route of the Southern through Asheville and Morristown, instead of the direct route by way of Marion, Va., and the Carolina, Clinchfield & Ohio. From Raleigh the distance to Johnson City by way of the Marion route is 328 miles as against 422 miles by way of Morristown.

Knoxville is more representative for the purposes of this report than are the four points used by the defendants.

The following is a statement of the average short-line distance from Richmond and Norfolk to Knoxville, the short-line distances from various points in North Carolina to the same point, and the rate spreads in favor of the North Carolina points which would result from the application of defendant's scale:

To Knoxville from—	Dis- tance.	Rate spread under defend- ants' scale.	To Knoxville from—	Dis- tance.	Rate spread under defend- ants' scale.
	Miles.	Cents.		Miles.	Cents.
Richmond-Norfolk.....	469		Durham.....	374	19
Bridgeton.....	509		Fayetteville.....	415	12.5
Parmele.....	502		Lumberton.....	395	16
Grimesland.....	497		Sanford.....	381	17.5
Wilson.....	449	8.5	Greensboro.....	320	28.5
Goldsboro.....	449	8.5	Hamlet.....	352	22
Warsaw.....	482	2	Monroe.....	269	31.5
Acme.....	445	8.5	Charlotte.....	275	34.5
Raleigh.....	400	16	Salisbury.....	270	36.5

In the foregoing we have referred to the rates *from* the Virginia cities and the North Carolina points for the reason that these were, as explained in our original report, revised on January 1, 1916, in compliance with our decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 32 I. C. C., 61, while those from South Carolina and the southeast *to* the Virginia cities and North Carolina were not so revised. The former, therefore, furnish a more satisfactory basis for comparison. There should be no difference between the northbound and southbound rates and, as stated in the original report, this is conceded by defendants.

Summing up the situation, defendants' criticisms of the differentials prescribed in our original report are impaired throughout by the unwarranted assumption that the undue prejudice must be removed solely by reductions in the North Carolina rates. Certain weaknesses in our plan have, however, been disclosed, and these are primarily due to the size of the North Carolina and South Carolina groups and the adoption of the same basis for the Tennessee adjustment as for the adjustment to the other southeastern states. The inconsistencies stressed by defendants are principally in connection with the rates to and from North Carolina points in the extreme eastern part of zone 1 or in connection with the rates for short hauls to and from South Carolina points. To meet these objections we have, in the revised adjustment herein prescribed, divided the North Carolina territory into three groups as to Tennessee traffic and into four groups as to traffic to the remainder of the southeast; and South Carolina, together with a small portion of Georgia, we have divided into three groups. In addition the minimum spreads have been substantially revised.

Upon the whole record we find that the first-class rates from and to points in zones 1, 2, 3, and 4 in North Carolina to and from points in South Carolina and the southeast should be lower than the corresponding rates from and to Richmond and Norfolk by at least the following amounts in cents per 100 pounds:

62 I. C. C.



Between—	And—	Minimum spread.
(1) Points in zone 1 east of the line of the Atlantic Coast Line between Weldon, N. C., and Goldsboro, N. C.	(a) All points in South Carolina on or north of a line extending from Blacksburg, S. C., through Chester, S. C., to Camden, S. C., thence along the line of the Southern through Sumter Junction, S. C., to Sumter, S. C., thence along the line of the Atlantic Coast Line through Timmonsville and Mullins, S. C., to the North Carolina state line.	Cents. 12
(2) All points in zone 1 other than those described in (1).	Points described in (a).....	25
(3) Points in zone 2 north of Burgaw, Fayetteville, Aberdeen, Norwood, and Charlotte, N. C., including points on the Ellerbe and Jackson Springs branches of the Norfolk Southern.	Points described in (a).....	40
(4) Points in zone 2 other than those described in (3), and all points in North Carolina in zones 3 and 4.	Points described in (a).....	40
Points described in (1).....	(b) Points in South Carolina south of the line described in (a) and on or north of a line extending from Charleston, S. C., along the line of the Southern to Orangeburg, S. C., thence by air line to Columbia, S. C., thence along the line of the Columbia, Newberry & Laurens to Prosperity, S. C., thence along the line of the Southern to Greenwood, S. C., thence along the line of the Seaboard Air Line to the Savannah River, thence along the Georgia state line to the North Carolina state line.	11
Points described in (2).....	Points described in (b).....	28
Points described in (3).....	Points described in (b).....	36
Points described in (4).....	Points described in (b).....	43
Points described in (1).....	(c) Points in South Carolina south or west of the line described in (b) and on, north, or east of a line extending along the Savannah River from its mouth to the crossing of the Charleston & Western Carolina Railway, south of Augusta, Ga., thence along the line of that railway to its crossing over the Savannah River north of Augusta, thence along the Savannah River to the crossing of the Seaboard Air Line, thence along the line of the Seaboard to but not including Athens, Ga., thence parallel with but excluding the line of the Southern to Lula, Ga., thence along the line of the Southern through Toccoa, Ga., to the South Carolina state line.	10
Points described in (2).....	Points described in (c).....	21
Points described in (3).....	Points described in (c).....	32
Points described in (4).....	Points described in (c).....	30
Points described in (1).....	(d) Points in Georgia and Alabama on, east, or north of a line drawn through Stevenson, Fort Payne, Round Mountain, Rock Run, and Muscadine, Ala., and La Grange, Ga., to Columbus, Ga., thence along the Seaboard Air Line through Dawson, Ga., to Albany, Ga., and thence along the Atlantic Coast Line through Tifton, Ga., and Waycross, Ga., to and including Jacksonville, Fla.	8
Points described in (2).....	Points described in (d).....	18
Points described in (3).....	Points described in (d).....	25
Points described in (4).....	Points described in (d).....	30.5
Points described in (1).....	(e) Points in Georgia, Alabama, Mississippi, and Florida, west or south of the line described in (d) except points the short-line workable routes to which from the North Carolina points are via the Southern through Knoxville and Chattanooga, Tenn.	7
Points described in (2).....	Points described in (e).....	13
Points described in (3).....	Points described in (e).....	18
Points described in (4).....	Points described in (e).....	21
(5) Points in zone 1 on the line of the Atlantic Coast Line south of Weldon to and including Goldsboro, N. C., and points in zones 1, 2, 3, and 4 west of the line of the Atlantic Coast Line between Weldon and Wilmington, N. C., and east of a line extending from Durham, N. C., to Raleigh, N. C., along the line of the Southern, thence along the line of the Norfolk Southern to Fayetteville,	(f) Points in Tennessee east of a line extending along the Cumberland River from the Kentucky state line to Nashville; thence along the main line of the Nashville, Chattanooga & St. Louis to the Alabama state line, including Nashville and points on said main line, and points in Georgia and Alabama on or east of the line described in (d), the short line workable routes to which from	5

Between—	And—	Minimum spread.
		<i>Cents.</i>
thence along the line of the Atlantic Coast Line through Pembroke to the South Carolina state line, excluding points on the Clinton branch of the Atlantic Coast Line and points on the Wilmington, Brunswick & Southern Railroad.	North Carolina points are via the Southern through Knoxville and Chattanooga.	
Points described in (5).....	(g) Points in Tennessee west of the line described in (f) and points in Mississippi and Alabama west of the line described in (d) the short-line workable routes to which from the North Carolina points are via the Southern through Knoxville and Chattanooga.	4
(6) Points on or west of the Durham-Pembroke line described in (5) to but not including Greensboro, Star, and Wadesboro.	Points described in (f).....	8
Points described in (6).....	Points described in (g).....	6
(7) Greensboro, Star, and Wadesboro and points in zones 1, 2, and 4 west thereof.	Points described in (f).....	15
Points described in (7).....	Points described in (g).....	12

We find no undue prejudice in the maintenance of rates between points in zone 1 east of the line of the Atlantic Coast Line between Weldon and Goldsboro, points in zone 2 on the Atlantic Coast Line between Goldsboro and Wilmington, including the Clinton branch, and points on the Wilmington, Brunswick & Southern, on the one hand, and points in Tennessee, on the other, no higher than the rates contemporaneously maintained between Richmond or Norfolk and the same points.

We find that the rates on the other classes from and to the North Carolina points should be lower than the corresponding rates from and to Richmond and Norfolk by minimum amounts which are the same percentage of the minimum first-class spreads above prescribed as the rates on such other classes from and to Richmond and Norfolk are of the corresponding first-class rates.

We further find that the establishment of rates based upon the differentials above outlined will not remove the entire undue prejudice existing with respect to rates between points in North Carolina and points in South Carolina and other states to the south and west as compared with rates between the Virginia cities and the same points, and that to remove this further discrimination, a mileage scale should be established covering both single-line and joint hauls for distances up to 200 miles to apply alternatively with the group rates resulting from the differentials herein suggested.

It is not possible, however, upon this record to prescribe such a scale, and the defendants will be expected within 60 days after the serving of this report to submit to us for consideration such a mileage scale so constructed as to harmonize with the group rates. Preferably conferences should be held by the defendants with the complainants and others interested in an effort to reach an agreement upon the scale to be adopted before submitting it to us.

We adhere to our previous finding with respect to commodity rates, set forth on page 537 of the original report.

#### THE NORTHERN ADJUSTMENT.

As stated, the northern adjustment has to do with the rates to and from points in New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware. The complaint of the North Carolina shippers is that the spread between their rates and the corresponding rates of the Virginia cities is too great, and that their rates are both unduly prejudicial and unreasonable.

In the adjustment of the local rates between Virginia cities and North Carolina points, the latter are grouped in four zones. The rates are lowest to and from zone 1 and highest to and from zone 4. It appears that the joint rates between North Carolina points and eastern ports are based upon these local rates to and from Norfolk. In the case of the first-class rates, prior to September 1, 1917, Baltimore was 17 cents higher by water and rail than Norfolk; Philadelphia and New York were both 6 cents higher than Baltimore; and Boston was 5 cents higher than New York. The first-class all-rail rates were 12 cents higher in all cases than the corresponding rail-and-water rates. On September 1, 1917, the latter were increased 6 cents, reducing the differential from 12 cents to 6 cents. To and from eastern interior points, the same all-rail rates were applied as to and from the ports, where the eastern lines exacted the same specifics for their portion of the haul, but where the specifics were higher the all-rail rates were correspondingly increased. Rail-water-and-rail rates to and from the interior points, where such rates existed, were made 4 cents lower than the all-rail rates. All of these differentials became larger when the joint rates were increased in 1918 and again in 1920. The same basis is followed, defendants state, in making rates between eastern ports and interior points and the southeast.

Because of this method of construction, the North Carolina rates in question bear no fixed relation to the corresponding rates to and from the Virginia cities, but they are higher than the latter by amounts which are out of all proportion to the differences in distance. Thus, comparing the rates between Richmond and Raleigh and 12 typical eastern points, it was shown on page 538 of our original report that the differences in rates, prior to the 1920 increases, ranged from 54.1 to 131.9 per cent, while the differences in distance ranged from 28.3 to 100.7 per cent.

In our original report we found that the class-rate adjustment between points in zones 1 and 2 in North Carolina and Richmond and Norfolk, on the one hand, and the eastern territory in question, on the other, was unduly prejudicial to the North Carolina points

and unduly preferential of Richmond and Norfolk (1) to the extent that the first-class all-rail rates to and from points in zone 1 exceeded by more than 30 cents per 100 pounds, and to the extent that the first-class all-rail rates to and from points in zone 2 exceeded by more than 35 cents per 100 pounds, the contemporaneous first-class all-rail rates between the same eastern points and Norfolk or Richmond; (2) to the extent that the first-class water-and-rail rates to and from points in zones 1 and 2 exceeded by more than the same respective differentials the contemporaneous first-class water rates to and from Norfolk or Richmond; (3) to the extent that the first-class rail-water-and-rail rates to or from points in zones 1 and 2 exceeded the contemporaneous first-class rail-and-water rates to and from Norfolk and Richmond by more than the same respective differentials; and (4) to the extent that the rates on classes, other than first, to and from points in zones 1 and 2, exceeded rates made the same percentages of the first-class rates under our order as the rates on such other classes were of the first-class rates. We stated that the record was not adequate to enable us to determine differentials between commodity rates, but that we should expect the carriers to revise their commodity-rate adjustment promptly, using as a guide the prescribed class-rate relationships.

On August 26, 1920, rates between Norfolk or Richmond and eastern points were increased 40 per cent; rates between points in North Carolina and eastern points were increased  $33\frac{1}{3}$  per cent; and rates between points in North Carolina and Richmond or Norfolk were increased 25 per cent. If rates had been established in accordance with our order herein these percentage increases would have widened the spread of 30 cents by from 5.5 to 6.5 cents, and the spread of 35 cents by from 7.5 to 8.5 cents.

Defendants offer many objections to our order with respect to the northern adjustment, but the criticism upon which they lay the most stress is that any attempt to make rates to and from North Carolina points differentials over rates to and from the Virginia cities would disrupt the rate structure in the southeast. They show that the method which has been followed has been the reverse, that the local rates between North Carolina points and Norfolk have been used as a base, and that upon these the rates to and from eastern ports and interior points have been built up by adding certain differentials in the manner already described. This, they say, is the usual method of making rates between the south and points in other territories, and if it should now be reversed, in accordance with our order herein, it would create confusion in southern territory and also disrupt the relationship of eastern ports on traffic with North Carolina points. This would happen because the ports have a different relationship

on traffic with Virginia cities, whose rates we propose to use as a base. Thus, the present first-class differentials of Philadelphia, New York, and Boston over Baltimore on traffic to Norfolk and Raleigh, respectively, are as follows:

From—	To Norfolk.	To Raleigh.
	<i>Cents.</i>	<i>Cents.</i>
Philadelphia.....	5.5	19
New York.....	8.5	19
Boston.....	27	12.5

Defendants claim that in *Fourth Section Violations in the Southeast*, 32 I. C. C., 61, we approved the then existing eastern port differentials on traffic to and from the entire southeast, including North Carolina territory; and in a measure there is foundation for this claim. Speaking of the relationship between Boston and New York and Philadelphia in that case, we said at page 64:

In *Atlanta Freight Bureau v. S. Ry. Co.*, 29 I. C. C., 476, the Commission had occasion to examine these differentials, and saw no reason for disturbing them as to traffic to Atlanta. We see no reason for now changing these differentials as to traffic to this territory.

This comment did not cover the relationship of other ports or of eastern interior points, nor was consideration then given to the relationship between North Carolina points and the Virginia cities. The complaining North Carolina cities can not justly be denied a fair relationship with Norfolk and Richmond upon the ground that the present rates have been made by some particular method. It also appears that on traffic with central territory North Carolina rates are made by adding proportional rates to the Virginia cities rates, and this is substantially the method proposed in our order. However, the objection to disrupting, on the record now before us, the relationship between eastern ports on traffic with North Carolina territory is entitled to consideration in the disposition of the case, and as will later appear, it has entered into the conclusions reached herein.

Defendants again direct attention to certain of our decisions approving, between the rates of the Virginia cities and the rates of North Carolina points on traffic to and from central territory, spreads which are materially higher than our proposed spreads to and from eastern points. These decisions were considered in our original report and we pointed out at page 543 that the "vital conditions affecting western traffic, viz, the observance by the Chesapeake & Ohio Railway of the fourth section and the rivalry between the lines extending westward from the respective ports of Baltimore

and Norfolk, do not affect traffic to and from the east." Moreover, defendants confine their comparisons to central territory east of the line between Cincinnati and Chicago. The situation is not the same with respect to Cincinnati, Louisville, and points which base thereon. In *Rates to North Carolina Points*, 29 I. C. C., 550, we approved a differential of 20 cents, zone 1 over Virginia cities, in the first-class rates, from Cincinnati and Louisville, and this has since been affected by the various general rate increases so that rates from Cincinnati and Louisville to North Carolina points in zone 1 are now lower than the corresponding rates to the Virginia cities.

But this contention on the part of the defendants raises the question whether the Virginia cities rates to and from eastern points are held at a subnormal level by competitive influences beyond the carriers' control. In our original report, after reviewing the then existing situation, we reached this conclusion at page 544:

Taking all the circumstances into consideration, including the control exercised by the railroad corporations over certain of the steamship companies and the depressed earnings of the water lines, the evidence does not indicate that defendants are now compelled to maintain their all-rail rates between the Virginia cities and eastern seaboard ports on a subnormal basis because of water competition. There is ground for the inference that the water lines feel the necessity, in order that they may secure a substantial share of the traffic, of maintaining their rates at a somewhat lower level in general than the rail rates, but there seems no basis for a belief that the latter are at present held down by the water rates. Indeed, a more reasonable conclusion is that the steamship companies would willingly follow the lead of the carriers by land if the all-rail rates were increased. This may be a situation brought about by conditions which are temporary in character, but they have persisted now for some length of time and there is no certainty that they are temporary. What has been said of the all-rail rates to and from eastern ports applies with even greater force to the rates to and from interior points.

And in reaching this conclusion we described the situation with respect to the water routes as follows:

Although water service was greatly reduced during the world war, and has not since increased, there was at the time of the hearing service twice a week by the Merchants & Miners Transportation Company between Boston and Norfolk and between Providence and Norfolk, daily by the Old Dominion Steamship Company between New York and Norfolk, and daily by the Baltimore Steam Packet Company and the Chesapeake Steamship Company between Baltimore and Norfolk. All but the first-named company are controlled by various railroad defendants. While an independent boat line operates to and from Boston and Providence, this competition has not forced relatively lower rates than from or to the other eastern ports.

Since the hearing the Old Dominion Steamship Company has discontinued operation. Two of its boats were taken over by the Old Dominion Transportation Company, which is apparently independent of railroad control, and are now being operated in a triweekly service between Norfolk and New York. Two boats are also being

operated in triweekly service between Richmond and New York by the Richmond-New York Steamship Company, which is likewise independent of railroad control. The class rates of this latter company are substantially lower than the all-rail rates between the same ports, but thus far its competition has not necessitated reductions in the all-rail rates. It is significant that the class rates of the independently operated Old Dominion Transportation Company between Norfolk and New York, of the independently operated Merchants & Miners Transportation Company between Norfolk and Baltimore and between Norfolk and Boston, and of the railroad-controlled Chesapeake Steamship Company and Baltimore Steam Packet Company between Richmond and Baltimore and between Norfolk and Baltimore are the same as the corresponding all-rail rates, except for certain slight variations in lower classes. In other words, the water carriers have increased their rates to correspond with the increases made by the rail carriers following our authorization of July 29, 1920.

Nor does it appear that the rates between eastern territory and Virginia cities are now conspicuously low. As shown in our original report, while the rates from eastern ports to Norfolk and Richmond are substantially lower than the central freight association scale, the corresponding rates from interior eastern points are substantially higher than that scale. Upon reargument it was stated for defendants that the Pennsylvania felt that it could not raise its rates to Norfolk or Richmond materially without throwing them out of line with the general adjustment in its territory; and it was also shown that if the proposed 10-class scale were introduced in official classification territory, there would be no marked increase in the rates between eastern ports and Norfolk or Richmond.

No very substantial reasons, therefore, have been shown for modifying our former conclusion that defendants are not compelled "to maintain their all-rail rates between the Virginia cities and eastern seaboard ports on a subnormal basis because of water competition." Between Philadelphia and Norfolk or Richmond no water lines whatever operate, and the same is of course true of eastern interior points. However, the establishment of the new independent lines between these Virginia cities and New York and the general rate situation make water competition a factor which ought not wholly to be disregarded, and it has received consideration in our conclusions.

A more serious objection to the findings of our original report is that no all-water class rates applying locally between Norfolk or Richmond and eastern ports, with the exception of Baltimore, are filed with us. Certain scales of all-water class rates are filed for application between New York and Norfolk and between Boston and Norfolk, but these are proportional rates applicable only on traffic

received from or delivered to connecting lines at the ports. The all-water rates applying locally between Norfolk and Richmond, on the one hand, and Philadelphia, New York, and Boston, on the other, are not subject to the interstate commerce act. For this reason we are constrained to vacate our finding of undue prejudice in so far as these particular rates are concerned.

The Baltimore Steam Packet Company and the Chesapeake Steamship Company file with us class rates applicable locally between Norfolk or Richmond and Baltimore which are the same as the all-rail rates between these points. In *Steamer Lines Norfolk to Baltimore and Other Points*, 41 I. C. C., 285, we granted the applications of the Southern and the Atlantic Coast Line under section 5 of the act for permission to continue their operation of the Chesapeake Steamship Company, and the similar application of the Seaboard Air Line relating to the Baltimore Steam Packet Company. Section 5 provides that in every case of such extension the rates, schedules, and practices of the water carrier shall be filed with us and shall be subject to the act in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation.

From Norfolk to Philadelphia and New York class rates which are the same as the all-rail rates between the same points are maintained by way of the Chesapeake Steamship Company or the Baltimore Steam Packet Company to Baltimore and the Baltimore & Ohio beyond, and from Boston to Richmond class rates are maintained by way of the Merchants & Miners Transportation Company to Norfolk and rail beyond, which are the same as the all-rail rates between Boston and Richmond, except that the fourth, fifth, and sixth classes are higher by 1.5 cents, 1.5 cents, and 0.5 cent, respectively. In Appendix No. 2 to this report are set forth the class rates between the eastern ports and Norfolk and Richmond, including the all-water rates to and from Baltimore and the water-and-rail rates referred to above.

On brief defendants argue as follows:

The Carolina lines can not and do not control the all-water rates from eastern ports to Norfolk or Richmond. They do not and can not control the all-rail rates applied by the trunk lines from eastern ports and interior eastern points to Norfolk and Richmond. We insist, as we have done throughout this case, that the Carolina lines can not legally be held responsible for the Virginia cities' rates made and controlled by other lines, and that they should not be required to reduce the rates between the East and North Carolina, which the Commission has found and held to be not unreasonable or excessive, merely on account of the level of rates applied by other lines to Norfolk and Richmond.

As a matter of fact, the all-water rates between Baltimore and Norfolk or Richmond by way of the Chesapeake Steamship Com-  
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pany and Baltimore Steam Packet Company are, as we have seen, controlled by three southern railroads, viz, the Southern, the Atlantic Coast Line, and the Seaboard Air Line, and these are the only all-water rates with which we are now concerned. The all-rail rates between eastern points and North Carolina and the water-and-rail rates between Baltimore and North Carolina in connection with the Chesapeake Steamship Company and the Baltimore Steam Packet Company are joint rates for which the southern carriers, as well as the northern carriers, are jointly and severally responsible. The northern rail carriers and the two steamship companies named are parties defendant. The issue of undue prejudice is not a question of the lawfulness of the Virginia cities rates, standing alone, but rather a question of the lawfulness of the relationship between the Virginia cities rates and the North Carolina rates. That we have authority to hold the southern carriers, as well as the northern carriers, responsible for the undue prejudice which we have found to exist in the relationship is well settled. Whether the prejudice should be removed by increasing the Virginia cities rates or by reducing the North Carolina rates, or by both increases and reductions, and this is the question which seems most to concern the southern carriers, is another matter.

The southern carriers contend that if undue prejudice exists we should require its removal solely through increases in the Norfolk and Richmond rates, because, they say, in the original report we found that the rates to and from the North Carolina points were not unreasonable. They further assert that any reduction in the North Carolina rates would have to be borne entirely by the southern lines. Why this is so is not made clear, for we have authority to prescribe divisions.

In our original report we did not find that each individual rate between North Carolina points and eastern territory was reasonable, but only that the evidence did not warrant a conclusion that the rates *in general* were unreasonable. The following is our language at pages 542-543:

Conceding the cogency and force of many of complainants' comparisons, we do not think that the evidence warrants a conclusion that the rates between North Carolina cities and northern territory in general are unreasonable. They may be in particular instances, for manifestly inconsistencies exist; but it is not practicable upon the record to attempt an analysis of the vast number of rates making up the northern adjustment, with a view to segregating those which rise above the limits of reasonableness. We are influenced in this conclusion by the low earnings realized from operation of the lines of these carriers during the past year and at the present time, and also by the fact that the issue in which the complainants are chiefly interested is clearly the relationship between their rates and the rates to and from Richmond and Norfolk.

The primary issue being relationship, and since it was impracticable to consider each separate rate, we merely declined, upon the evidence before us, to condemn the North Carolina rates generally as unreasonable, and left to the carriers the initiative of determining how the undue prejudice should be removed.

There seems little justification for maintaining all-rail rates between the eastern ports and Norfolk and Richmond on a lower basis than prevails generally in trunk line territory, and so far as they are lower, the Norfolk and Richmond rates might well be increased. But we are not convinced that there should be no reductions in the North Carolina rates. The first-class all-rail rate between Baltimore and zone-1 points is \$1.50. In the following statement are shown the distances from Baltimore to Norlina, Raleigh, and Winston-Salem, all zone-1 points; the ton-mile earnings under the rate of \$1.50; and the rates for like distances under the scale prescribed in *Memphis-Southwestern Investigation, supra*, and under the zone-A scale prescribed in *C. F. A. Class Scale Case*, 45 I. C. C., 254, plus, in both instances, the percentage increases authorized in those scales since their establishment.

Between Baltimore and—	Distance	Ton-mile earnings under present rates.	Rate under Memphis-Southwestern scale.	Rate under c. f. a. scale.
	Miles.	Cents.	Cents.	Cents.
Norlina.....	254	11.8	150.5	87
Raleigh.....	313	9.6	167.5	92.5
Winston-Salem.....	357	8.4	177.5	96.5

Norlina approximates the shortest distance between Baltimore and zone-1 points, Raleigh the average, and Winston-Salem the greatest. In *Increased Rates, 1920, supra*, we recognized the main line of the Norfolk & Western between Norfolk and Kenova, W. Va., as a dividing line between the eastern group, which includes trunk line and central territories, and the southern group, which includes Carolina and southeastern territories. Of the haul between Baltimore and Norlina approximately 70 per cent is in trunk line and 30 per cent in Carolina territory. Of the hauls between Baltimore and Raleigh and Winston-Salem approximately 57 and 60 per cent, respectively, are in trunk line territory, leaving approximately 43 per cent and 40 per cent in Carolina territory. Prior to our decision in *Increased Rates, 1920, supra*, the rates in the southeast for distances over 100 miles were, as stated in *Consolidated Classification Case*, 54 I. C. C., 1, 7, generally substantially lower than those in the southwest, and the southwestern rates have since been increased 35 per cent as against

an increase of 25 per cent in the southeastern rates. The southwestern scale is also, for distances over 150 miles, substantially higher than the scale proposed by defendants for application between North Carolina and South Carolina, which is referred to in our discussion of the southern adjustment.

The use of the southwestern scale for purposes of comparison is not, therefore, unfair to defendants. As shown above, for the distance of 254 miles from Baltimore to Norlina the southwestern scale rate is 150.5 cents and the central freight association scale rate 87 cents. Seventy per cent of the haul is in trunk line territory and 30 per cent in Carolina territory. Adding 70 per cent of 87 cents, or 61 cents, to 30 per cent of 150.5 cents, or 45 cents, gives a through rate of 106 cents. The same process yields rates of 124.5 cents and 129 cents to Raleigh and Winston-Salem, respectively.

The following table shows corresponding information with respect to rates between Philadelphia, New York, and Boston, on the one hand, and the North Carolina points, on the other:

From—	To—	Distance.	Rates.			Percentage of haul.		Computed rate. <sup>1</sup>
			First-class all-rail.	Under M.-S. W. scale.	Under c. f. a. scale.	In Carolina territory.	In trunk-line territory.	
		Miles.	Cents.	Cents.	Cents.	Per cent.	Per cent.	Cents.
Philadelphia.	Norlina.....	349	160	177.5	96.5	21	79	112.5
Do.....	Raleigh.....	408	160	192.5	103	33	67	132.5
Do.....	Winston-Salem.....	448	160	198	106.5	31	69	135
New York.	Norlina.....	445	160	198	106.5	17	83	122
Do.....	Raleigh.....	504	160	212.5	112.5	27	73	136.5
Do.....	Winston-Salem.....	544	160	218	117	26	74	143.5
Boston.	Norlina.....	674	168.5	243	128.5	11	89	141
Do.....	Raleigh.....	733	168.5	258	134	18	82	156.5
Do.....	Winston-Salem.....	773	168.5	263	138	18	82	160.5

<sup>1</sup> Rate arrived at by adding such percentage of the c. f. a. scale rate for the total haul as the haul in trunk line territory bears to the total haul, to such percentage of the Memphis-Southwestern scale rate for the total haul as the haul in Carolina territory bears to the total haul.

<sup>2</sup> For distances over 600 miles Memphis-Southwestern scale extended at average rate of progression for last 100 miles.

<sup>3</sup> For distances over 600 miles c. f. a. scale extended at average rate of progression for last 100 miles.

Similar computations, with the carriers' proposed scale shown in Appendix No. 1 substituted for the Memphis-Southwestern scale, result in the following rates:

From—	To Norlina.	To Raleigh.	To Winston-Salem.
	Cents.	Cents.	Cents.
Baltimore.....	102	125	129
Philadelphia.....	107.5	121.5	125
New York.....	116.5	129.5	134
Boston.....	126.5	148	152.5

In some instances the rates from the ports to North Carolina points, although for hauls largely in trunk line territory, are higher

than the rates for like distances under the scale in Appendix No. 1, as shown in the following table:

From—	To Norfolk.		To Raleigh.		To Winston-Salem.	
	Actual rates.	Scale rates. <sup>1</sup>	Actual rates.	Scale rates. <sup>1</sup>	Actual rates.	Scale rates. <sup>1</sup>
Baltimore.....	Cents. 150	Cents. 136.5	Cents. 150	Cents. 145.5	Cents. 150	Cents. 132
Philadelphia.....	160	150	160	159.5	160	155.5
New York.....	160	165.5	160	175.5	160	152
Boston.....	168.5	208	168.5	212.5	168.5	219

<sup>1</sup> For distances over 500 miles scale extended at same rate of progression as for last 100 miles.

The first-class all-rail rates from the eastern ports to Richmond and Norfolk compare with the rates for corresponding distances under the central freight association zone-A scale as follows:

Between—	And—	Distance.	Rates.	
			First-class.	C. f. a. scale.
Baltimore.....	Richmond.....	Miles. 156	Cents. 68	Cents. 73
Do.....	Norfolk.....	255	68	87
Philadelphia.....	Richmond.....	252	83.5	87
Do.....	Norfolk.....	255	73.5	87
New York.....	Richmond.....	344	83.5	95.5
Do.....	Norfolk.....	351	76.5	95.5
Boston.....	Richmond.....	573	95	119
Do.....	Norfolk.....	580	95	119

From the foregoing it appears that there should be no insuperable difficulty in substantially contracting the spreads between the rates from and to the eastern ports to and from Richmond and Norfolk and the rates from and to the eastern ports to and from North Carolina points by both increases and decreases.

We turn now to the propriety of the differentials or spreads prescribed in our original report plus the increases which would have resulted under our authorization of July 29, 1920.

Defendants show that if the first-class rate from Baltimore to zone-1 points is reduced so that it will not exceed the first-class rate from Baltimore to Norfolk by more than our differential, it will exceed the first-class rate from Norfolk to zone 1 by only a very small amount. The latter rate is 95.5 cents, and if our order had been complied with and solely by reductions, the first-class all-rail and water-and-rail rates from Baltimore to zone 1 would be \$1.045, or but 9 cents over the Norfolk-zone 1 rate. Likewise the first-class rate from Baltimore to zone 2 would be but 5 cents higher than the rate from Norfolk to zone 2. There is no warrant for the

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assumption that the entire contraction of the spread would have to be accomplished by reductions in the North Carolina rates, and the Norfolk rates extend also to Richmond. But with due allowance for these matters, the comparison indicates that the spreads prescribed in the original report are too small, at least for short-haul traffic.

Defendants further show that if the rates from Baltimore to the North Carolina points had been reduced so that they would not exceed the corresponding rates from Baltimore to Norfolk by more than our differentials, they would be lower, or only slightly higher, than the rates from Baltimore and Washington, D. C., to points in Virginia, some of them intermediate to the Carolina points, for lesser distances. For example, the first-class all-rail rate from Baltimore to zone-1 points would be \$1.045 as against first-class rates of \$1.21 to Emporia, \$1.245 to Danville, and \$1.105 to Lynchburg from Baltimore, and first-class rates of \$1.12 to Danville and \$1.105 to Lynchburg from Washington. These rates, however, are substantially out of line, distance considered, with the Richmond rates, as illustrated in the following table:

From Baltimore to—	Distance.	Rate.	Ton-mile earnings.	Rate under c. f. a. scale.
	Miles.	Cents.	Cents.	Cents.
Richmond.....	156	68	8.7	73
Emporia.....	223	121	10.9	83.5
Danville.....	281	124.5	8.9	89.5
Lynchburg.....	215	110.5	10.3	82.5

On brief defendants make the following statement:

The distance from Norfolk to Winston-Salem is 380 miles. Zone 1 in North Carolina from east to west extends for a distance of practically 400 miles, and, notwithstanding this, the decision of the Commission would require rates from Baltimore and other eastern ports to all points in this zone to be made differentials of only 30 cents over the rates of the eastern trunk lines applied to Norfolk.

The distance from Norfolk to Winston-Salem, by way of the Southern through Raleigh, is but 296 miles, and by way of the same road, through Danville, but 284 miles. From east to west zone 1 extends hardly more than 200 miles. Nor is it fair to measure the relationship solely by the distance from Norfolk to the North Carolina points, since much of the all-rail traffic to those points does not move through Norfolk. Respecting the size of zones 1 and 2, it may also be observed that defendants have voluntarily blanketed rates over these zones.

Prior to August 26, 1920, the class rates between eastern ports and points in zone 2 were, in general, higher than the corresponding rates

between eastern ports and points in zone 1 by the following amounts in cents per 100 pounds:

Class.....	1	2	3	4	5	6
Spread.....	9	8.5	7.5	7.5	6	5

On the date named the spreads became 12, 11.5 10, 10, 8, and 6.5 cents, respectively. There are slight variations in some of the class rates to and from Boston. Defendants protest against any narrowing of the existing spreads. The following table shows the ton-mile earnings under the first-class all-rail rates from the eastern ports to zones 1 and 2 under distances which roughly approximate the average:

From—	Average distances.		Ton-mile earnings.	
	Zone 1.	Zone 2.	Zone 1.	Zone 2.
	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Baltimore.....	300	350	10	9.3
Philadelphia.....	400	450	8	7.6
New York.....	500	550	6.4	6.3
Boston.....	700	750	4.8	4.8

This comparison indicates that the zone-2 rates are not materially out of line, distance considered, with the zone-1 rates.

In most instances the North Carolina points are on a more favorable basis, compared with Richmond and Norfolk, with respect to interior eastern points than they are with respect to eastern ports. This is illustrated in the following statement showing the first-class all-rail rates from the ports and from representative interior points to Richmond, Norfolk, and zone-1 points, and the differences in favor of the Virginia cities:

From—	Rates.			Difference in favor of—	
	To Norfolk.	To Richmond.	To Zone 1.	Norfolk.	Richmond.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Baltimore.....	68	68	150	82	82
Philadelphia.....	73.5	83.5	160	96.5	96.5
New York.....	76.5	83.5	160	92.5	76.5
Boston.....	95	95	163.5	73.5	73.5
Pittsburgh, Pa.....	117	117	180	63	63
Buffalo, N. Y.....	117	117	185.5	58.5	58.5
Syracuse, N. Y.....	102	102	163.5	61.5	61.5
Albany, N. Y.....	102	102	163.5	61.5	61.5
Rochester, N. Y.....	102	102	163.5	61.5	61.5
Lowell, Mass.....	95	95	168.5	73.5	73.5
Waterbury, Conn.....	95	95	168.5	73.5	73.5
New Haven, Conn.....	95	95	168.5	73.5	73.5
Elmira, N. Y.....	102	102	163.5	61.5	61.5
Harrisburg, Pa.....	102	102	160	48	48
Wilkes-Barre, Pa.....	102	102	160	58	58
Reading, Pa.....	102	102	160	58	58
Scranton, Pa.....	102	102	160	58	58

Summing up the matter, upon consideration of all that has been said in reargument we are persuaded that the differentials prescribed in our original report should be modified. There is no little difficulty in dealing justly with the situation, and notably because of the irregularity and inconsistency both of the rates between eastern territory and Virginia cities and of the rates between eastern territory and North Carolina. The reargument, however, has shown:

(1) That the differentials prescribed are not properly adjusted to the shorter-haul traffic, such as the traffic between Baltimore and North Carolina points.

(2) That the spread in the differentials as between zone 1 and zone 2 in North Carolina is inadequate.

(3) That it is desirable, at least upon the present record, to adopt a plan which will, if possible, make it unnecessary to disrupt the present differentials between eastern ports on traffic with Carolina territory.

(4) That water competition affecting the Virginia cities rates is a factor which ought not to be wholly disregarded, although the evidence indicates that it is of minor importance.

In attempting modifications with a view to meeting these valid criticisms of our former action we have, therefore, made the differentials large enough to fit short-haul traffic and to maintain a suitable spread between zones 1 and 2, and also large enough to permit leeway for preserving port differentials and avoiding the possible danger of surrendering traffic to water routes. It is contemplated that these differentials will be held merely as maxima and that the actual differentials, in many cases, will fall below these maxima.

We therefore find that the class-rate adjustment attacked between eastern ports and interior eastern points, on the one hand, and Richmond, Norfolk, and points in North Carolina in zones 1 and 2, on the other, is unduly prejudicial to the North Carolina points and unduly preferential of Richmond and Norfolk (1) to the extent that the first-class all-rail rates to and from points in zone 1 exceed the corresponding rates to and from Richmond by more than 60 cents per 100 pounds; (2) to the extent that the first-class all-rail rates to and from points in zone 2 exceed the corresponding rates to and from Richmond by more than 72 cents per 100 pounds; (3) to the extent that the first-class water-and-rail rates between Baltimore and zone-1 points exceed the first-class all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than 60 cents per 100 pounds; (4) to the extent that the first-class water-and-rail rates between Baltimore and zone-2 points exceed the first-class all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than 72 cents per 100 pounds; (5) to the extent

that the all-rail rates on classes other than first between eastern ports and interior eastern points, on the one hand, and points in zone 1, on the other, are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (1) above, the percentages of first class contemporaneously maintained with respect to the rates between Richmond, on the one hand, and the same points in zone 1, on the other; (6) to the extent that the all-rail rates on classes other than first between eastern ports and interior eastern points, on the one hand, and points in zone 2, on the other, are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (2) above, the percentages of first class contemporaneously maintained with respect to the rates between Richmond, on the one hand, and the same points in zone 2, on the other; (7) to the extent that the water-and-rail rates on classes other than first between Baltimore and points in zone 1 are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (3) above, the percentages of first class contemporaneously maintained with respect to the rates between Norfolk or Richmond, on the one hand, and the same points in zone 1, on the other; and (8) to the extent that the water-and-rail rates between Baltimore and points in zone 2 are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (4) above, the percentages of first class contemporaneously maintained with respect to the rates between Norfolk or Richmond, on the one hand, and the same points in zone 2, on the other.

As stated in the original report, while the record is not sufficiently complete to enable us to determine differentials between commodity rates, it is sufficient to warrant the conclusions that a prejudicial situation exists which should be corrected and that the carriers should revise their commodity-rate adjustment promptly, using as a guide the class-rate relationships prescribed herein.

It is to be observed, as already indicated, that the relationships prescribed are maximum relationships and do not prevent the carriers from making the general adjustment more consistent by establishing narrower spreads where justified.

Our former order will be canceled and an appropriate order conforming to our findings herein will be entered.

COMMISSIONER POTTER did not participate in the disposition of this case.



## APPENDIXES.

## APPENDIX No. 1.

*Scale proposed by carriers in Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C., 5, and in instant case for application between North Carolina and South Carolina.*

	First-class rate.		First-class rate.
	<i>Cents.</i>		<i>Cents.</i>
5 miles and under.....	31.5	210 miles and over 200.....	128
10 miles and over 5.....	34.5	220 miles and over 210.....	130
15 miles and over 10.....	39.5	230 miles and over 220.....	131.5
20 miles and over 15.....	44	240 miles and over 230.....	133
25 miles and over 20.....	49	250 miles and over 240.....	134.5
30 miles and over 25.....	53	260 miles and over 250.....	136.5
35 miles and over 30.....	55	270 miles and over 260.....	137.5
40 miles and over 35.....	59	280 miles and over 270.....	139.5
45 miles and over 40.....	62.5	290 miles and over 280.....	140.5
50 miles and over 45.....	65.5	300 miles and over 290.....	142.5
55 miles and over 50.....	69	310 miles and over 300.....	144
60 miles and over 55.....	71.5	320 miles and over 310.....	145.5
65 miles and over 60.....	75	330 miles and over 320.....	147
70 miles and over 65.....	77.5	340 miles and over 330.....	149
75 miles and over 70.....	81.5	350 miles and over 340.....	150
80 miles and over 75.....	84.5	360 miles and over 350.....	152
85 miles and over 80.....	87.5	370 miles and over 360.....	153
90 miles and over 85.....	90.5	380 miles and over 370.....	155
95 miles and over 90.....	94	390 miles and over 380.....	156.5
100 miles and over 95.....	95.5	400 miles and over 390.....	158
110 miles and over 100.....	99	410 miles and over 400.....	159.5
120 miles and over 110.....	102	420 miles and over 410.....	161.5
130 miles and over 120.....	105	430 miles and over 420.....	162.5
140 miles and over 130.....	108	440 miles and over 430.....	164.5
150 miles and over 140.....	111.5	450 miles and over 440.....	165.5
160 miles and over 150.....	114.5	460 miles and over 450.....	167.5
170 miles and over 160.....	117.5	470 miles and over 460.....	169
180 miles and over 170.....	120.5	480 miles and over 470.....	170.5
190 miles and over 180.....	124	490 miles and over 480.....	172
200 miles and over 190.....	127	500 miles and over 490.....	174

The first-class rates above shown should be increased 12.5 cents where applied over hauls comprising two or more lines.

## APPENDIX No. 2.

*Present all-rail class rates in cents per 100 pounds.*

	1	2	3	4	5	6
<b>Between Richmond and—</b>						
Baltimore <sup>1</sup> .....	68	56.5	50.5	42	33.5	28.5
Philadelphia <sup>2</sup> .....	83.5	70.5	61.5	52	39	34.5
New York.....	83.5	70.5	61.5	52	39	34.5
Boston <sup>3</sup> .....	95	82.5	72	61	50.5	45
<b>Between Norfolk and—</b>						
Baltimore <sup>1</sup> .....	68	56.5	50.5	42	33.5	28.5
Philadelphia <sup>2</sup> .....	73.5	61	54.5	45	35	30
New York <sup>4</sup> .....	76.5	63.5	57.5	47.5	38.5	31.5
Boston.....	95	82.5	72	61	50.5	45

<sup>1</sup> Same rates apply all water between same points.

<sup>2</sup> Same rates apply from Boston to Richmond via water to Norfolk and rail beyond, except that the water-and-rail rates for the last three classes are 62.5, 52, and 45.5 cents, respectively.

<sup>3</sup> Same rates apply from Norfolk to Philadelphia via water to Baltimore and rail beyond.

<sup>4</sup> Same rates apply from Norfolk to New York via water to Baltimore and rail beyond.

No. 11159.<sup>1</sup>

## CHOATE OIL CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

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*Submitted December 20, 1920. Decided May 20, 1921.*

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Rates on crude petroleum, in tank-car loads, from the Burkburnett and Ranger districts, in Texas, and the Shreveport district, in Louisiana, to Oklahoma City, Okla., found not unreasonable. Complainants not shown to have been damaged by the alleged undue prejudice, if any. Complaints dismissed.

*H. C. McCord* for complainants.

*C. S. Burg* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants Choate Oil Corporation and Home Petroleum Company, corporations refining crude petroleum at Oklahoma City, Okla., allege that the rates charged on crude petroleum, in tank-car loads, to Oklahoma City from points in the Burkburnett and Ranger districts, in Texas, between January 1 and October 14, 1919, and from points in the Shreveport district, in Louisiana, between January 1 and December 31, 1919, were unreasonable, and also unjustly discriminatory and unduly prejudicial to complainants and unduly preferential of refiners located at Cushing, Sapulpa, Okmulgee, and Tulsa, Okla., Kansas City and Sugar Creek, Mo., Fort Worth, Tex., and Shreveport, La. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

Prior to readjustment on October 14, 1919, Oklahoma City, as to crude petroleum from the Texas and Louisiana fields, was in a destination group which included most of Oklahoma, and took the same rates as Cushing, Okmulgee, Sapulpa, and Tulsa.

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<sup>1</sup> This report also embraces No. 11159 (Sub-No. 1), Home Petroleum Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.

The following table shows the rate situation during the year 1919:

From—	To Oklahoma City.	To other points in Oklahoma group.	To Kansas City and Sugar Creek.	To Fort Worth.	To Shreveport.
Burkburnett:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Prior to Oct. 14, 1919.....	1 22.5	22.5	24.5	14.5	18
On and after Oct. 14, 1919.....	18.5	20.5	23.5	14.5	18
Ranger:					
Prior to Oct. 14, 1919.....	1 25	25	27	12.5	17
On and after Oct. 14, 1919.....	21	23	26	12.5	17
Shreveport:					
Prior to July 20, 1919.....	1 35	35	24.5	15	.....
From July 20 to Dec. 30, 1919.....	24.5	35	24.5	15	.....
On Dec. 31, 1919.....	21	23	24.5	15	.....

<sup>1</sup> Assailed rate.

Earnings under the rates assailed are compared by complainants with earnings under the rates to other points in the former Oklahoma group. Short-line distances from a single point in each of the three groups of origin are used. The car-mile revenue is based on a return empty movement, less mileage allowance for car hire. The empty-car mileage is concededly 100 per cent. The following is illustrative:

From—	To Oklahoma City.				To Tulsa.			
	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings.	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings.
Burkburnett.....	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Do.....	1 181	22.5	24.66	41.5	297	22.5	16.15	24.5
Do.....	2 263	22.5	17.1	.....	.....	.....	.....	.....
Do.....	3 211	22.5	21.3	.....	.....	.....	.....	.....
Ranger.....	1 301	25	16.61	27	413	25	12.10	19
Do.....	2 286	25	13.66	.....	.....	.....	.....	.....
Shreveport.....	1 408	35	17.24	28	431	35	16.24	26
Do.....	2 407	24.5	12.07	19	.....	24.5	11.37	14.5

<sup>1</sup> Distance used by complainants.

<sup>2</sup> Average short-line distance shown by defendants.

<sup>3</sup> Average haul as admitted by complainants.

The rates assailed and the ton-mile earnings thereunder were somewhat higher than rates and earnings in the same general territory computed on either the Texas or Oklahoma intrastate scale, and also higher, distance considered, than the rates and revenues on refined oil eastbound from Oklahoma points resulting from our decision in *Midcontinent Oil Rates*, 36 I. C. C., 109.

Although the rates are assailed as unreasonable in themselves, complainants' principal grievance appears to be the alleged prejudicial treatment of Oklahoma City as a refining point and the undue preference of competing points, particularly Tulsa. Oklahoma City is the nearest of the Oklahoma refining points to the sources of supply. Thus the distance to Tulsa exceeds that to Oklahoma City by about

116 miles from Burkburnett, 112 miles from Ranger, and 25 miles from Shreveport. The outbound rates on refined products are not in issue, but by reason of the fact that from the other Oklahoma points to western trunk line territory and markets east of the Mississippi River they were lower by 2 cents than from Oklahoma City the application of equal inbound rates on crude petroleum to all the Oklahoma refineries is alleged to have subjected complainants to undue prejudice.

The rate adjustment has since been corrected and is of importance now only in its bearing on the matter of reparation. Complainants say that they found it necessary to meet the Tulsa prices on refined products and to shrink their profits accordingly, but it does not appear that the price in any general market was governed by Tulsa or any other Oklahoma refinery. The Chicago price is to a great extent the controlling factor. Complainants have not proved that any element of undue prejudice in the rates assailed was the proximate cause of whatever damage they may have suffered. There is, therefore, no basis for an award of reparation on the ground of undue prejudice. Defendants urge other objections which need not be considered.

Defendants maintain the propriety of grouping Oklahoma City with Tulsa and the other points prior to the readjustment, on the ground that traffic in crude oil from the Texas and Louisiana fields was in an early stage of development. Shipments from the Burkburnett district commenced in 1917 and from the Ranger district in 1918. They criticize complainants' comparisons of rates and earnings on the basis of the short-line distance from one point in each originating group, and urge that the rates should be considered in their group application rather than between particular points. Defendants mention a number of other commodities, including oil-well supplies, on which rates from Texas are grouped to all Oklahoma points. The rates assailed varied from 40 to 45 per cent of fifth class until July 20, 1919, when the rate from Shreveport became 28 per cent of fifth class. They cite *Atwood Refining Co. v. Director General*, 57 I. C. C., 22, in which a former rate of 32.5 cents on crude petroleum from Burkburnett to Oklahoma City was found unreasonable to the extent that it exceeded the subsequent 22.5-cent rate, now assailed by complainants. The finding in that case went no further than the prayer for relief.

Defendants further contend that the reduction of these rates was part of a systematic and comprehensive readjustment, and should not be made the basis of an award of reparation. The existence of a 2-cent differential against Oklahoma City on outbound refined products does not render unreasonable or otherwise unlawful the

application of group rates on its inbound crude petroleum, nor does the record sustain complainants' contention that the rates assailed were in and of themselves unreasonable.

We find that the rates assailed were not unreasonable, and that complainants have not shown damage by reason of any undue prejudice which may have existed. The complaints will be dismissed.



No. 11647.

MEMPHIS MERCHANTS EXCHANGE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, GULF & SHIP ISLAND  
RAILROAD COMPANY, ET AL.

*Submitted January 6, 1921. Decided May 27, 1921.*

Rates on imported blackstrap molasses, in tank-car loads, from Mobile, Ala., and New Orleans, La., to Memphis, Tenn., found not unreasonable. Complaint and petitions in intervention dismissed.

*James B. McGinnis* for complainants.

*W. J. Gorman* for United States Food Products Corporation et al.; *W. A. Bruce* for Ralston Purina Company et al.; and *W. P. Flynn* for Penick & Ford, Limited, Incorporated, interveners.

*A. P. Humburg, Henry G. Herbel, Charles Rixey, jr., and W. N. McGehee* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants manufacture mixed feed at Memphis, Tenn., and are members of the Memphis Merchants Exchange. They allege that the rate of 16.5 cents on imported blackstrap molasses, hereinafter called blackstrap, shipped to Memphis in tank-car loads between December 31, 1919, and January 29, 1920, inclusive, and on and after February 25, 1920, from Mobile, Ala., and points in the New Orleans, La., group, was and is unreasonable. They ask that we prescribe a reasonable rate for the future and award reparation. Certain ship-

pers located at other destinations intervened in support of the complaint.

Blackstrap is a by-product resulting from the manufacture of sugar and molasses from cane, and is used extensively as an ingredient of mixed feed and in the manufacture of industrial alcohol. About 50 per cent of the blackstrap used in this country is imported, principally from Cuba, through the ports of Mobile and New Orleans.

For several years prior to September 1, 1916, the import and domestic rates from New Orleans to Memphis were the same. On that date the domestic rate of 10 cents was increased to 13 cents, as authorized in *Molasses from Texas and Louisiana*, 40 I. C. C., 435. The import rate of 10 cents remained unchanged. We will state rates in this report in cents per 100 pounds, and unless otherwise noted rates mentioned herein are restricted to blackstrap molasses of value not exceeding 8 cents per gallon. On June 25, 1918, the domestic rate was increased to 16.5 cents under general order No. 28 of the Director General of Railroads. That order also provided for the cancellation of all import rates, leaving the domestic rate to apply on all shipments. On July 10, 1918, certain import rates, including those on blackstrap, were restored, subject to an increase of 25 per cent. The resulting import rate was 12.5 cents. On December 31, 1919, the import rates were again canceled and thereby the rate of 16.5 cents was restored. On January 30, 1920, the import rate of 12.5 cents was reestablished, but on February 25, 1920, all import rates on blackstrap from Gulf and south Atlantic ports to points on and east of the Mississippi River and south of the Ohio River were canceled, leaving domestic rates to apply. Thereupon the rate of 16.5 cents again became applicable and remained in effect until increased to 20.5 cents under the general increase authorized by us on July 29, 1920. The rate adjustments from Mobile were practically the same as from New Orleans.

Complainants attack that portion of general order No. 28 under which the import rates were canceled and which resulted in the application of the domestic basis. They contend that the rate charged was unreasonable to the extent that it exceeded 12.5 cents, and that for the future a reasonable rate would not exceed 12.5 cents plus the general increase authorized in our decision of July 29, 1920. Complainants compare the rate assailed with similar specific rates on blackstrap from the same points to Ohio and Mississippi river crossings, but it does not appear from such comparisons that the rate charged is out of line with the others shown.

The rate attacked is lower than rates on other grades of molasses. Defendants support their view that no good reason exists for according blackstrap lower rates than other grades of molasses by citing 62 I. C. C.

INTERSTATE COMMERCE COMMISSION REPORTS.

in triweekly service between Richmond and New  
mond-New York Steamship Company, which is li  
of railroad control. The class rates of this latte  
stantially lower than the all-rail rates between the  
far its competition has not necessitated reduct  
rates. It is significant that the class rates of th  
operated Old Dominion Transportation Compan  
s and New York, of the independently operated  
s Transportation Company between Norfolk and  
between Norfolk and Boston, and of the railro  
apeake Steamship Company and Baltimore Steam  
between Richmond and Baltimore and between  
more are the same as the corresponding all-rail  
ertain slight variations in lower classes. In o  
carriers have increased their rates to correspo  
es made by the rail carriers following our a  
29, 1920.

r does it appear that the rates between east  
inia cities are now conspicuously low. As sh  
eport, while the rates from eastern ports to  
l are substantially lower than the central  
the corresponding rates from interior eas  
ially higher than that scale. Upon rearg  
efendants that the Pennsylvania felt that  
to Norfolk or Richmond materially wa  
f line with the general adjustment in it  
shown that if the proposed 10-class se  
l classification territory, there would  
tes between eastern ports and Norfolk  
very substantial reasons, therefore.  
our former conclusion that defend  
in their all-rail rates between th  
d ports on a subnormal basis be  
Philadelphia and Norfolk or  
erate, and the same is of  
However, the establishme  
these Virginia cities and  
make water competition  
regarded, and it has rece  
e serious objection to  
all-water class rates  
d and eastern port  
h us. Certain sc  
on between New  
but these are

received from the government... water... one... are not... are... as they...

The... ship... NIA... private... report, Pa.,... dismissed.

From... EASTMAN.

the new... proposed by the... member business, seeks... shipped on March... that of the Dittmar... limits of Williams-... Pennsylvania and charges... cents per 100 pounds. It is... unreasonable.

that... are the Public Service Com-... rates were... it for want of jurisdiction. ... domestic... act, 1920, we have jurisdic-... reasonable... by the complaint. *Miller v.* ... future a... *Count Hood R. R. Co. v. Director*

increase... comparing the... switching charge of 21 cents per ton, ... from the same... switched between public and ... it does not appear... should have been assessed. A note ... is out of line... that this charge would "not apply to ... rate attacked is... lines," and, defendants contend, pre- ... dants support the... switching charge. The shipments origi- ... Blackstrap lower... Pa., to Williamsport over lines other ... I. O. C.



*Molasses Rates to Knoxville, Tenn.*, 30 I. C. C., 613, and *Rates on Blackstrap Molasses*, 32 I. C. C., 176, wherein we permitted specific rates on blackstrap to be increased to the regular molasses basis. They make comparison of the 16.5-cent rate charged with higher molasses rates from New Orleans and Mobile to points in the south-east which apply to blackstrap, and with rates on cottonseed oil, petroleum oil, and other commodities moving in tank cars.

The history of the establishment of blackstrap rates in the Mississippi Valley on a basis lower than that applying to molasses in general as a result of competitive conditions has been detailed in former reports and need not be repeated here. It is conceded that the domestic rate was reasonable as such, and it does not here appear that its application to export shipments resulted in unreasonable charges.

In *Meridian Traffic Bureau v. Director General*, 60 I. C. C., 549, we refused to restore the former import rates on blackstrap from New Orleans and Mobile to Meridian, Miss., and found not unreasonable a rate of 15 cents charged on shipments made after February 25, 1920. Upon the facts of record and following that decision, we find that the rates assailed were not, and are not, unreasonable.

An order dismissing the complaint and petitions in intervention will be entered.

62 I. C. C.

No. 11355.

CENTRAL PENNSYLVANIA LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA  
RAILROAD COMPANY.

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*Submitted December 23, 1920. Decided May 19, 1921.*

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Movement of two carloads of lumber, during federal control, from one private siding to another, both within the switching limits of Williamsport, Pa., found to have been overcharged. Refund directed. Complaint dismissed.

*E. L. Woolever* for complainant.

*John F. Finerty* and *Edwin A. Lucas* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner and the case has been orally argued.

Complainant, a corporation engaged in the lumber business, seeks an award of reparation on two carloads of lumber shipped on March 29 and April 9, 1918, from its private siding to that of the Dittmar Furniture Company, both within the switching limits of Williamsport, Pa. The shipments moved over the Pennsylvania and charges were collected at the sixth-class rate of 5 cents per 100 pounds. It is alleged that these charges were unjust and unreasonable.

Complaint was originally brought before the Public Service Commission of Pennsylvania, which dismissed it for want of jurisdiction. Under section 206 (c) of the transportation act, 1920, we have jurisdiction to determine the issues presented by the complaint. *Miller v. Director General*, 60 I. C. C., 162; *Mount Hood R. R. Co. v. Director General*, 60 I. C. C., 116.

Complainant contends that a switching charge of 21 cents per ton, applicable on all carload shipments switched between public and private sidings in Williamsport should have been assessed. A note in defendants' tariff provided that this charge would "not apply to or from tracks of connecting lines," and, defendants contend, prevented application of the switching charge. The shipments originally moved from Leetonia, Pa., to Williamsport over lines other  
62 I. C. C.

than the Pennsylvania. The lumber, although intended for ultimate delivery to the Dittmar company on the Pennsylvania's tracks, was consigned to complainant with Philadelphia & Reading delivery specified. The cars were placed on complainant's private siding by that road. Both the Philadelphia & Reading and the Pennsylvania connect directly with this siding. The shipments were consigned to complainant in order that it might inspect the lumber and replace any of inferior grade. Inspection was completed about one day after placement and new bills of lading were issued under which the shipments were switched by the Pennsylvania to the private siding of the Dittmar company.

Defendants urge that these were through shipments from Leetonia to the siding of the Dittmar company and that the inspection at complainant's siding was merely incidental. They explain that the note in the switching tariff was inserted to secure a line haul for the Pennsylvania. The shipments could have been routed from Leetonia for Pennsylvania delivery to complainant, and if that had been done the switching charge would have been applied without question. Defendants contend, however, that the shipments came from the tracks of the Philadelphia & Reading, a connecting line, and that for the purpose of this case complainant's private siding should be considered an interchange track of the carriers. It is immaterial whether or not these were through shipments from Leetonia to the siding of the Dittmar company. The rate for the switching movement is determined by the fact that they were switched from a private siding within the switching limits of Williamsport and not from the tracks of a connecting line.

We find that the rate of 21 cents per ton was applicable and that the shipments were overcharged in the amount of the difference between the charges collected and those which would have accrued at that rate. Defendant will be expected to refund promptly the overcharge, with interest, to the party or parties lawfully entitled thereto. An order will be entered dismissing the complaint.

No. 11436.

ROWLAND-POWER CONSOLIDATED COLLIERIES  
COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,  
INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY.

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*Submitted March 2, 1921. Decided May 19, 1921.*

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Charges on water, in tank-car loads, from Howesville, Ind., to complainants' mines near Midland, Ind., during federal control, found unreasonable. Reparation awarded.

*Clarence A. Royse, Whitcomb & Dowden, and Clarence B. Cardy* for complainants.

*C. C. Hine, John F. Finerty, and Royal T. McKenna* for defendants.

*A. C. Tummy* for Chicago, Indianapolis & Louisville Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants, Rowland-Power Consolidated Collieries Company, hereinafter called the Rowland company, and the Linton Coal Company, hereinafter called the Linton company, are corporations operating coal mines near Midland, Ind., on a branch line of the Chicago, Indianapolis & Louisville, hereinafter called the Monon. By complaint filed April 26, 1920, they assail as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, the charges assessed for the intrastate transportation of water, in tank-car loads, from Howesville, Ind., to their mines, between August 1 and December 31, 1918. Reparation only is sought. Rates will be stated in amounts per car.

The water was purchased from the Monon and was obtained from its pumping station near Howesville. It moved over that line in tank cars for which complainants paid rental charges of from \$3 to \$5 per day. Loading and unloading were performed by the train crew, complainants' employees assisting in the unloading.

The approximate distance from the loading point to the two mines of the Rowland company is 3.5 and 5.5 miles, respectively, and to the mine of the Linton company 16 miles. Charges at the rate of \$15 were assessed on some of the shipments and at \$14.50 on others, as hereinafter explained. Special train service was rendered and the actual cost thereof was assessed in addition to the per-car rate.

For many years prior to June 25, 1918, blanket rates on water, approximately \$5, regardless of distance, were generally in effect in Indiana and Illinois. This was the rate from Howesville to complainants' mines until January 11, 1918. On that date it was increased to \$10, and on May 10, 1918, to \$11.50. The tariff publishing the latter rate carried a note as follows:

This rate applies only when moving under regular freight train service; when special train service or handling is required, the entire expense thereof including wages of train and engine crews, cost of fuel and all other supplies will be charged additional. Shipper to pay car rental.

On June 25, 1918, the rates of all carriers under federal control were increased pursuant to general order No. 28 of the Director General of Railroads, with provision that except on certain specified commodities, not including water, the minimum charge should be \$15 per car. Accordingly a rate of \$15 became effective on that date. This minimum rate applied generally throughout Indiana and Illinois. As a result of protests against this increase the Railroad Administration, on August 29, 1918, issued a freight-rate authority authorizing the elimination on one day's notice of the minimum charge of \$15 on water. Pursuant thereto a blanket rate of \$6.50 was established generally throughout Indiana and Illinois, representing the former rate of \$5 increased by approximately 30 per cent. *Illinois Coal Traffic Bureau v. Director General*, 56 I. C. C., 426, 427. The rate from Howesville to complainants' mines was not reduced under this freight-rate authority, and the \$15 rate remained in effect until reduced to \$14.50 on October 3, 1918. The note regarding additional charge for special train service also appears in the tariffs publishing the \$15 and \$14.50 rates.

The rates assailed, exclusive of charge for special train service, represent increases of 200 and 190 per cent over the rate in effect prior to January 11, 1918, more than 25 per cent over the rate in effect immediately prior to June 25, 1918, and about 131 and 128 per cent over the rates generally in effect in Indiana and Illinois. Complainants contend that \$6.50 per car would have been a reasonable charge for the service and that no additional charge for so-called special service is warranted. They refer to rates on water in effect on other railroads in the same general territory for comparable dis-

tances. With certain exceptions a rate of \$6.50 applies generally for distances up to 15 miles in the states of Indiana, Illinois, Iowa, and Missouri. Of these rates the highest is \$10.50, between points in Ohio, and the lowest \$4.50, between points in Indiana. Complainants' witness testifies that physical conditions, such as topography, are not substantially different from those surrounding the transportation between other points in Indiana and Illinois.

Complainants maintain that if in normal times they were charged a rate of \$14.50 plus a charge for special train service they would be forced to suspend operation. In this connection they show that during the months of August to December, 1918, inclusive, 1,111 tank-car loads of water were hauled over the Monon from Howesville to the mines of the Rowland company for an average distance of 4 miles, at a total transportation cost of \$19,163.93. Of this amount, \$16,109.50 represents freight charges at a rate of \$15 or \$14.50, depending on the time of movement, and \$3,054.43 the cost of special train service. In addition, charges for car rental amounted to \$117. During this period it is testified that the mines produced 62,703 tons of coal at an increased cost of 31.8 cents per ton, due to the necessity of transporting water. The total cost of the water itself was \$812.81. During the months of October, November, and December, 1918, the Monon hauled 220 tank-car loads of water from Howesville to the mine of the Linton company at a total transportation cost of \$5,800.98, of which \$3,175.50 is freight and \$2,625.48 the cost of special train service. The latter charges are outstanding. In addition rental of tank cars amounted to \$1,035 and \$118.97 was paid by this complainant for mileage on empty tank cars. The water cost \$153.92. It is testified that during these months the Linton company's mines produced 32,854 tons of coal at an increased cost of 21.9 cents per ton due to the necessity of transporting water. Complainants paid 10 cents per thousand gallons for the water and the value per carload did not exceed 80 cents.

Complainants also show that the revenue per car and per car-mile is high in comparison with that received by the Monon on manure and other low-grade commodities for short hauls.

Defendants in justification say that they recognized the necessity for prompt and regular service by giving water shipments preference over all others, that a special engine and crew were assigned exclusively to this service, and that a new water tank and pump were installed at a cost of \$3,000. This tank is also used by the Monon. The special engine and crew made about four round trips a day, handling an average of about seven cars on each trip. The pumping station is a mile or two north of Howesville on the main track, and while the water was being loaded all other traffic was blocked. The

average time consumed in loading was in excess of 15 minutes per car. About eight trains, principally coal carrying, operate over this line daily, and as the water train had the right of way other trains were often delayed from 15 minutes to an hour when the tanks were being filled at the pumping station. Complainants admit that prompt and regular service was required, but point out that it was also to the Monon's interest to keep the mines supplied with water, as otherwise coal traffic on that line would have been curtailed.

Defendants also refer to the need of the Railroad Administration for additional revenue at the time, and state that \$15 per car is about as low a rate as a carrier should be expected to charge for any line-haul service. As indicative of the cost of the service they say that on 220 cars handled for the Linton company the average out-of-pocket cost per car was \$11.93. It is impossible on this record to analyze the cost figures because the data from which they were computed are not given in sufficient detail. The average out-of-pocket cost of the cars handled for the Rowland company is stated to be \$2.75 per car. The only difference in the service rendered to the two companies was in the length of haul, and there is an unexplained discrepancy in the cost figures.

In *Illinois Coal Traffic Bureau v. Director General, supra*, we prescribed a scale of maximum reasonable rates for line-haul movements of water, in carloads, between points within the state of Illinois, and awarded reparation. The rate prescribed for 15 miles and less was \$9, and for 30 miles and over 15, \$11.50. The scale of rates there considered and modified by us in so far as it involved rates on water between points in Illinois, had been published as a uniform scale for application in Colorado, Iowa, Missouri, and other states.

We find that the charges assailed were unjust and unreasonable to the extent that they exceeded for distances of 15 miles and less, \$9 per car, and for distances of more than 15 miles, \$11.50 per car, with no additional charge for special train service; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice. Collection of the outstanding charges for special train service may be waived.

No. 11503.

ROCK PRODUCTS TRAFFIC LEAGUE

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted February 19, 1921. Decided May 27, 1921.*

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Rate on molding sand, in carloads, from Ottawa, Ill., to Chattanooga, Tenn., found not to have been unreasonable or unduly prejudicial. Complaint dismissed.

*J. H. Kane* for complainant.

*R. E. Riley* for United States Silica Company.

*Wm. Burger, F. K. Crosby, and G. A. Hoffelder* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner. The case was orally argued before us.

By the complaint herein, filed on behalf of the Ross-Meehan Foundries, a corporation engaged in the manufacture of castings at Chattanooga, Tenn., it is alleged that the rate of \$3.70 per net ton, charged by defendants on shipments of molding sand, in carloads, from Ottawa, Ill., to Chattanooga between August 1, 1918, and May 29, 1920, inclusive, was unreasonable and unduly prejudicial to the extent that it exceeded \$3.20, the latter being the rate contemporaneously applicable from Ottawa to Pittsburgh, Pa., Buffalo, N. Y., and other points in the same group. We are asked to award reparation and to establish a reasonable and nonprejudicial rate for the future. Rates are stated in amounts per net ton and do not include the general increase authorized by us July 29, 1920.

Ottawa is about 80 miles southwest of Chicago, in a district having extensive deposits of silica sand. The various uses of this sand were described in *Silica Sand Producers' Asso. v. Director General*, 58 I. C. C., 549. It is of materially greater value than common sand and is shipped from the Ottawa district, usually in box cars or in covered gondola cars, to points throughout the country. The shipments in question were worth about \$2 per ton on the cars at Ottawa.

62 I. C. C.



They weighed from 63,000 to 110,000 pounds, moved over the defendant carriers' lines and charges thereon were collected at the applicable joint rate of \$3.70.

Most of the shipments moved through Evansville, Ind., and Nashville, Tenn., over a route 641 miles in length. By way of other routes the distances from Ottawa to Chattanooga range from 599 to 787 miles. From Ottawa to Pittsburgh, 546 miles, to Buffalo, 588 miles, and to Depew, N. Y., 650 miles, a rate of \$3.20 applied. Complainant also cites a rate of \$2.30 from Ottawa to Cleveland, Ohio, 428 miles, and a rate of \$2.60 from Ottawa to Wallaceburg, Ontario, 523 miles. It insists that the transportation conditions from and to these points are similar to those from Ottawa to Chattanooga. The facts of record do not sustain this contention.

Opposed to complainant's comparisons defendants cite rates of \$3.80 to \$4.80 from Ottawa to points in Pennsylvania, New York, Maryland, and Kansas, 601 to 738 miles; \$3.10 to \$4.50 from Ottawa to points where molding sand is used in Tennessee, Alabama, and Georgia, 454 to 743 miles. Defendants also urge that the separately established rates from Ottawa to Evansville and from Evansville to Chattanooga are reasonable, and point to the fact that the rate complained of is 20 cents less than the aggregate of these rates.

We find that the rate assailed was not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

62 I. C. C.

No. 11711.

TUFFLI BROTHERS PIG IRON & COKE COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted March 5, 1921. Decided May 20, 1921.*

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Rate charged on a carload of pig iron from Memphis, Tenn., to Belleville, Ill., found unreasonable. Reparation awarded.

*J. Scheele* for complainant.

*A. P. Humburg, John F. Finerty, Alex. M. Bull, E. C. Blanchard,*  
and *William Smith, jr.*, for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Defendant filed exceptions to the report proposed by the examiner.

Complainant, a corporation dealing in pig iron at St. Louis, Mo., alleges that the rate of 31.5 cents charged by defendant on a carload of pig iron shipped February 26, 1920, from Memphis, Tenn., to Belleville, Ill., was unreasonable to the extent that it exceeded 15 cents. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The shipment moved over the Illinois Central, 295 miles. It weighed 40,800 pounds, and freight charges of \$128.52 were collected, based on the applicable sixth-class rate of 31.5 cents, governed by southern classification and actual weight. That rate was subject to a minimum weight of 50,000 pounds, and the shipment was undercharged \$28.98.

There was then in effect from Memphis to Belleville over the Illinois Central a commodity rate of 15 cents, minimum 24,000 pounds, on "special iron articles" including many fully manufactured articles of iron and steel. A rate of \$4.30 per ton of 2,240 pounds, minimum 25 tons, approximately 19.2 cents per 100 pounds, was applicable on pig iron from Birmingham, Ala., to Belleville, approximately 548 miles. This rate, protected by a fourth section application, applied through Memphis and over the Illinois Central. Complainant compares these rates with the rate charged.

The shipment originally moved to Memphis from Birmingham. There are no pig iron furnaces at Memphis and defendant's witness testifies that there is no movement to Belleville which would warrant the establishment of a commodity rate. It is testified that the "special iron articles" rate from Memphis to St. Louis and points taking the same rates, including Belleville, was established many years ago to meet competition on the Mississippi River, and that as a result of our decision in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, 575, this and other similarly depressed rates between Memphis and St. Louis will be revised upward. Defendant compares the rate assailed with numerous higher sixth-class rates from points in Tennessee, Kentucky, Arkansas, and Mississippi to Belleville and St. Louis, and between many points in the Mississippi Valley for comparable distances.

In southern classification territory pig iron now takes the "special iron" rates, or in the absence of such rates, sixth-class rates.

We find that the rate assailed was unreasonable to the extent that it exceeded the "special iron articles" rate contemporaneously in effect over the Illinois Central Railroad from Memphis to Belleville; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$67.32, with interest. Defendant is authorized to waive collection of the outstanding undercharge.

An order awarding reparation will be entered.

62 I. C. C.

No. 10527.

E. I. DU PONT DE NEMOURS &amp; COMPANY

v.

DIRECTOR GENERAL, NEW YORK, PHILADELPHIA &  
NORFOLK RAILROAD COMPANY, ET AL.

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Submitted April 22, 1921. Decided May 19, 1921.

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Rate on imported nitrate of soda, in bags, in carloads, from Norfolk, Va., to Carney's Point, N. J., found unreasonable. Reparation awarded.

*Harvey S. Farrow* for complainant.*Henry Wolf Bikelé* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

Complainant, a corporation manufacturing explosives at Carney's Point, N. J., by complaint filed March 19, 1919, as amended, alleges that the rate charged on three carloads of imported nitrate of soda in bags shipped February 28, 1917, from Norfolk, Va., to Carney's Point was unjust and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the New York, Philadelphia & Norfolk to Delmar, Del., and the Pennsylvania system through Philadelphia, Pa., beyond. They aggregated 306,816 pounds, and charges were collected in the sum of \$680.28, at the applicable joint sixth-class rate of 22.1 cents.

Contemporaneously there was in effect over the same route a combination rate of 15.3 cents, 9 cents to Philadelphia and 6.3 cents beyond. This departure from the provisions of the fourth section of the act to regulate commerce was protected by an appropriate application and has since been removed. In a similar case, *Du Pont de Nemours & Co. v. Director General*, 56 I. C. C., 233, we found that the rate charged was unreasonable and awarded reparation to the basis of the 15.3-cent rate.

The foregoing facts are substantially those appearing in a stipulation of record entered into between the parties, by which a hearing is expressly waived and it is agreed that reparation should be awarded to the basis found reasonable in the case cited.

We find that the rate assailed was unreasonable to the extent that it exceeded 15.3 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged and is entitled to reparation in the sum of \$209.32, with interest.

An appropriate order will be entered.

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No. 11410.

RUMBLE & WENSEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted February 15, 1921. Decided May 19, 1921.*

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Rates on cotton from Mississippi points named, concentrated at Natchez, Miss., and reshipped to New Orleans, La., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*B. F. Martin* for complainant.

*A. P. Humburg* and *E. H. Ratcliff* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale grocery and cotton business at Natchez, Miss., alleges that the local rates charged on 2,324 bales of cotton shipped after June 25, 1918, from Fayette, Pattison, Hermanville, St. Elmo, Insmore, and Utica, Miss., concentrated and compressed at Natchez, and reshipped to New Orleans, La., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is sought.

The points of origin named are on the Yazoo & Mississippi Valley northeast of Natchez. Prior to June 25, 1918, the rates on cotton, any quantity, from these points to New Orleans were the same as the sums of the local rates to and beyond Natchez. On that date, pursuant to general order No. 28 of the Director General of Railroads, the rates to New Orleans and the local rates to and beyond Natchez were each increased 15 cents per 100 pounds, the Natchez

combinations thus becoming 15 cents higher than the rates to New Orleans. Effective November 8, 1918, the Yazoo & Mississippi Valley established the practice of permitting concentration and compression at Natchez of cotton from these points of origin and its reshipment to New Orleans at the through rates. The tariff in which this arrangement is authorized provides that to obtain the benefit of the through rates shippers must surrender at the time the compressed cotton is tendered for movement beyond Natchez original paid freight bills covering the movement inbound of a like quantity of uncompressed cotton from the stations named therein. Some of the shipments here considered originated after the establishment of this transit arrangement, and all moved from Natchez after its establishment, but complainant did not comply with this requirement, and charges were collected on all the shipments at the local rates applicable to and from Natchez. Complainant asserts that during the period in which this cotton was reshipped from Natchez it had no knowledge of the transit arrangement; that promptly upon learning of the arrangement it filed with the Yazoo & Mississippi Valley a claim, accompanied by receipted freight bills covering the inbound movements, seeking refund of the difference between the charges paid and those which would have accrued at the through rates; and that the claim was denied for the reason that the conditions of the transit tariff had not been strictly observed.

A transit provision is an entirety, and must be accepted in its entirety or not at all. *Carson Lumber Co. v. St. Louis & S. F. R. Co.*, 209 Fed., 191. Complainant's admitted failure to observe strictly the substantial conditions of the governing tariff prevented its shipments from coming within the scope of the transit arrangement. Nor does its ignorance of the tariff provisions affect the situation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *Western Transit Co. v. Leslie & Co.*, 242 U. S., 448. In *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.*, 35 I. C. C., 172, we denied reparation on transit shipments as to which complainant failed to comply with the tariff requirement of surrender of inbound freight bills.

Complainant presented no evidence to show that the local rates assessed were unreasonable. In support of the allegations of unjust discrimination and undue prejudice it asserts that the full benefits of the transit arrangement were accorded shipments made by its principal competitor at Natchez; and that during the period of movement the Yazoo & Mississippi Valley maintained at Memphis, Tenn., an arrangement under which the through rates on cotton concentrated at that point were protected by means of claim adjustments effected subsequent to the dates of movement. Complainant admits that its

Natchez competitor complied with the terms and conditions of the transit tariff, and that the Natchez arrangement is preferable to that at Memphis.

As defendant points out, Natchez is at the end of a branch line, and shipments moving through Natchez to New Orleans from the points at which the cotton originated take out-of-line hauls of from 52 to 56 miles. Its exhibits show that during the movement period the components of the Natchez combination rates were lower, generally speaking, than the rates contemporaneously maintained on like traffic for comparable distances in southeastern Mississippi Valley territory.

We find that the rates assailed were not unreasonable, unjustly discriminatory, or unduly prejudicial.

The complaint will be dismissed.

62 I. C. C.

No. 11696.  
WEIR SMELTING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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PORTIONS OF FOURTH SECTION APPLICATIONS  
NOS. 4218 AND 4220.

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*Submitted December 27, 1920. Decided May 19, 1921.*

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1. Rate on slack coal, in carloads, from Deering, Kans., to Caney, Kans., during federal control, found unreasonable. Reparation awarded.
2. Fourth section relief denied.

*S. C. Bates* for complainant.

*Henry G. Herbel* and *James M. Chaney* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the smelting of zinc ore with a plant at Caney, Kans. By complaint filed August 2, 1920, as amended, it alleges that the rates charged on 172 carloads of slack coal shipped intrastate between September 3, 1918, and February 12, 1920, inclusive, from Deering, Kans., to Caney, were unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to award reparation. Rates will be stated in amounts per net ton.

The shipments moved over the Missouri Pacific a distance of 14 miles. Charges were collected at the applicable rates of 75 cents prior to October 30, 1919, and 90 cents thereafter. There was contemporaneously in effect from Pittsburg, Kans., to Caney, 84 miles, a commodity rate of 80 cents. Deering is intermediate between Pittsburg and Caney. These rates were applicable to both interstate and intrastate traffic. The commodity rate of 80 cents was published under rule 77 of Tariff Circular 18-A, providing for its application from intermediate points of origin on interstate but not on intrastate traffic.

621. C. C.



The rate history is briefly this: Prior to July 20, 1917, the interstate and intrastate rates to Caney from Deering on both slack and lump coal were 50 cents; from Pittsburg on slack 45 cents, and on lump 90 cents. On that day the interstate rates from Pittsburg became 60 cents on slack and \$1.05 on lump. On August 5, 1917, the interstate rates from Deering on slack and lump were increased to 65 cents. These increases followed *The Fifteen Per Cent Case*, 45 I. C. C., 303, 323. The intrastate rates remained unchanged. On June 25, 1918, under general order No. 28 of the Director General of Railroads, the interstate rates from Deering and Pittsburg were increased to 75 and 80 cents on slack, 90 cents and \$1.40 on lump, respectively, and the intrastate rates on both were made equal to the interstate rates. On October 30, 1919, both rates from Deering on slack were increased by 15 cents and became 90 cents, the same as on lump. For greater distances in that region rates on slack were generally lower than on lump.

There are no mines at Deering. The coal was purchased from an abandoned plant. None has moved before or since, and apparently none will move.

Complainant submits comparisons showing that the earnings per ton-mile and per car-mile were less under rates for similar distances in the same general territory than under the rates charged, and that the earnings under the rates from Pittsburg to Caney were similar to those under the rates between various other points in this territory. Some of the comparisons are shown below:

From—	To—	Distance.		Rate.	Ton-mile earnings.	Car-mile earnings. <sup>1</sup>
		Missouri Pacific.	St. Louis-San Francisco.			
		Miles.	Miles.	Cents.	Mills.	
Deering, Kans.....	Caney, Kans.....	14	.....	90	64	\$2.99
Do.....	do.....	14	.....	75	53.5	2.49
Do.....	do.....	14	.....	50	36	1.67
Carona, Kans.....	Pittsburg, Kans.....	14	.....	60	45	2.00
Arma, Kans.....	do.....	12	.....	60	50	2.32
Cokedale, Kans.....	do.....	16	.....	60	38	1.77
Drywood, Kans.....	do.....	21	.....	60	29	1.35
Englevale, Kans.....	do.....	16	.....	60	38	1.77
Girard, Kans.....	do.....	.....	10	40	40	1.86
Seammon, Kans.....	do.....	.....	14	40	29	1.35
Girard, Kans.....	Cherokee, Kans.....	.....	12	50	42	1.95
Pittsburg, Kans.....	do.....	.....	10	50	50	2.32
Do.....	Caney, Kans.....	84	.....	80	9.6	.44
Carona, Kans.....	do.....	70	.....	80	11.4	.53
Bronaugh, Mo.....	do.....	90	.....	80	8.9	.41
Liberal, Mo.....	do.....	80	.....	80	10	.47
Minden, Mo.....	do.....	73	.....	80	11	.57

<sup>1</sup> Based on 33,000 pounds average loading of 66 cars.

<sup>2</sup> Rate sought.

Coal is produced at all these points of origin except Deering and moves from them in volume. There is no evidence of unjust discrimination.

With this case were heard those portions of fourth section applications Nos. 4218 and 4220 filed by the Missouri Pacific and the St. Louis, Iron Mountain & Southern, by which authority is sought to charge lower rates on slack coal from Pittsburg to Caney than from Deering and other intermediate points. Any fourth section departures in the charges from Pittsburg to Caney which were protected by these applications have been removed and the applications will be denied to the extent herein considered. The departure occasioned by the increase in the interstate rate on slack coal from Deering to Caney effective October 30, 1919, was unauthorized and was and is unlawful.

We find that the rate of 90 cents was unreasonable during federal control to the extent that it exceeded 75 cents per net ton; that complainant made the shipments as described between October 30, 1919, and February 12, 1920, inclusive, and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

62 I. C. C.

No. 11258.

**PROCTER & GAMBLE MANUFACTURING COMPANY**  
*v.*  
**DIRECTOR GENERAL, AS AGENT, AND STATEN ISLAND  
RAPID TRANSIT RAILWAY COMPANY.**

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*Submitted February 9, 1921. Decided May 27, 1921.*

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Minimum fifth-class rate of 9 cents per 100 pounds charged on 27 carloads of copra shipped from the Vandam warehouse at Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., found not unreasonable. Complaint dismissed.

*H. Ignatius* for complainant.

*John F. Finerty, Alex. M. Bull, and William J. Kenney* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.**

**By DIVISION 2:**

Exceptions were filed by complainant and defendants to the report proposed by the examiner, and the case was orally argued. We have reached a conclusion differing from that proposed by the examiner.

Complainant is a corporation engaged in the manufacture of soap and in the production of vegetable oils at Port Ivory, N. Y., and other points. By complaint seasonably filed it alleges that the rate of 9 cents per 100 pounds charged by defendants on 27 carloads of copra shipped from the warehouse of the Vandam Storage Warehouse Company at Mariner's Harbor, Staten Island, N. Y., to Port Ivory during January, February, and March, 1919, via the Staten Island Rapid Transit Railway, was unjust and unreasonable to the extent that it exceeded 2.5 cents per 100 pounds, minimum 60,000 pounds per car. Reparation only is asked. Rates are hereinafter stated in cents per 100 pounds.

The copra was stored in the Vandam warehouse in August, 1918, because of a congestion of the storage facilities at complainant's plant. The warehouse is slightly less than 1.5 miles from complainant's plant and is connected with the main line of the Staten Island Rapid Transit Railway, hereinafter called defendant, by a

spur track approximately 1,600 feet long owned by the warehouse company. The rate charged was the applicable fifth-class rate.

In August, 1918, complainant asked defendant to establish a commodity rate on copra from the warehouse to its plant. Its request was refused and thereupon complainant appealed to the New York District Freight Traffic Committee of the United States Railroad Administration. This committee authorized defendant on March 12, 1919, to establish a rate of 2.5 cents, minimum 60,000 pounds, but all the shipments had moved prior to that date. Defendant opposed the establishment of the 2.5-cent commodity rate and it was never made effective.

Complainant contends that the charges collected were excessive for the service rendered. The shipments averaged 51,325 pounds and yielded \$46.19 per car. Complainant cites the following contemporaneous rates published by defendant on the commodities named for the maximum distances shown:

Commodity.	Maximum distance.	Carload minimum.	Rate.	Revenue per car.
	<i>Miles.</i>	<i>Pounds.</i>	<i>Cents.</i>	
Cement.....	15.2	60,000	5	\$30.00
Coke.....	13	30,000	5.15	15.45
Ice.....	19.1	50,000	3	15.00
Stone.....	26.7	80,000	4.5	36.00
Sand.....	26.7	100,000	3.5	35.00

The rates cited on stone and sand apply between all stations on defendant's line, a maximum distance of 26.7 miles, as did also the fifth-class rate of 9 cents charged on complainant's shipments. The rates on the other commodities apply from and to specified points.

Defendant supplements these comparisons by showing all other commodity rates between points on its line, as follows:

Commodity.	Distance.	Carload minimum.	Rate.	Revenue per car.
	<i>Miles.</i>	<i>Pounds.</i>	<i>Cents.</i>	
Iron and steel articles.....	19.6	36,000	4.5	\$16.20
Lumber.....	26.7	36,000	5.5	19.80
Brass and copper ingots and pigs.....	<sup>1</sup> 14.5	40,000	6.5	26.00
Petroleum and its products.....	2.8	<sup>2</sup> 60,000	8	48.00

<sup>1</sup> Proportional rate from Tottenville, N. Y., to St. George, N. Y., only.

<sup>2</sup> Estimated weight.

The commodity rates apply from and to stations between which there is a regular way-freight train service and a regular switching movement, conditions which do not obtain in connection with traffic from or to the Vandam warehouse. Defendant stresses the difficult and expensive operating conditions encountered in moving ship-

ments from the warehouse. Not more than three cars can be handled in one switching movement. Eight of the shipments were transported singly and the remainder in lots of two or three cars each.

The evidence for the Director General is addressed to the contention that the fifth-class rate was reasonable and that it afforded a proper basis for charges on unusual or sporadic movements of this kind. It was compared with the fifth-class rates of 5.6 cents prescribed in *C. F. A. Class Scale Case*, 45 I. C. C., 254, and of 7 cents prescribed in *Proposed Increases in New England*, 49 I. C. C., 421, for distances of 5 miles and less, which rates had been increased to 8 and 9 cents, respectively, when these shipments moved. It is admitted for complainant that unless unforeseen conditions arise there will be no more copra shipped from the Vandam warehouse to its plant.

We find that the rate assailed was not unreasonable. An order dismissing the complaint will be entered.

62 I. C. C.

No. 10950.<sup>1</sup>

## ACME CEMENT PLASTER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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Submitted February 3, 1921. Decided May 19, 1921.

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Combination rates on cement plaster, in carloads, from Acme, N. Mex., and Acme, Tex., to points in Illinois, Indiana, Ohio, Alabama, and Florida, bearing a so-called double increase under general order No. 28, found not unreasonable or otherwise unlawful. Complaints dismissed.

*S. H. West and M. N. Sale* for complainant.

*A. P. Stewart and William Burger* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner. These cases involve the same general question, were heard together, and will be disposed of in one report.

Complainant, a corporation manufacturing cement plaster, hereinafter called plaster, with principal office at St. Louis, Mo., alleges that the rates collected by defendants on 16 carloads of plaster shipped between June 27, 1918, and January 22, 1919, from Acme, N. Mex., and Acme, Tex., to points in Illinois, Indiana, Ohio, Alabama, and Florida were unjust and unreasonable. Reparation only is sought. Rates will be stated in cents per 100 pounds.

One shipment from Acme, N. Mex., to Florence, Ala., moved over the Atchison, Topeka & Santa Fe and the St. Louis-San Francisco, hereinafter termed the Frisco, to Memphis, Tenn., and the Southern beyond; and one from Acme, Tex., to West Palm Beach, Fla., over the Quanah, Acme & Pacific and the Frisco through Memphis to Birmingham, Ala., Seaboard Air Line to Jacksonville, Fla., and

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<sup>1</sup> This report also embraces No. 10951, Same v. Director General, as Agent, Quanah, Acme & Pacific Railway Company, et al.; No. 10951 (Sub-No. 1), Same v. Director General, as Agent, Quanah, Acme & Pacific Railway Company, et al.; No. 10951 (Sub-No. 2), Same v. Director General, as Agent, Quanah, Acme & Pacific Railway Company, et al.; and No. 10952, Same v. Director General, as Agent, Quanah, Acme & Pacific Railway Company, et al.

Florida East Coast beyond. All the remaining shipments moved from Acme, Tex., over the Quanah, Acme & Pacific and Frisco to St. Louis, and beyond as follows: Over the Southern to Belleville, Ill., and Evansville, Ind.; Pennsylvania lines to Bicknell and Terre Haute, Ind., Akron, Ohio, and Teutopolis, Casey, Martinsville, and Greenville, Ill.; and Illinois Central to Carterville and Newton, Ill., and New Harmony, Ind. No joint rates were published and charges were assessed on the basis of the applicable combination of rates to and beyond East St. Louis, Ill., Memphis, or Jacksonville.

The following table, compiled in part from defendants' exhibits, shows the rates applicable, which became effective June 25, 1918, pursuant to general order No. 28, of the Director General of Railroads, in comparison with those in effect on June 24, 1918; also the distance and ton-mile earnings under the rates assailed:

	Dis- tance.	Rate prior to June 25, 1918.			Rate effective June 25, 1918.			Ton- mile earn- ings. <sup>3</sup>
		Factor (a). <sup>1</sup>	Factor (b). <sup>2</sup>	Total rate.	Factor (a). <sup>1</sup>	Factor (b). <sup>2</sup>	Total rate.	
Acme, N. Mex., to—	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Mills.
Florence, Ala.....	1,351	15	6	21	17	8	25	3.5
Acme, Tex., to—								
Belleville, Ill.....	751	15	4.2	19.2	17	5.5	22.5	5.6
Evansville, Ind. (3 cars).....	978	15	6	21	17	8	25	4.7
Bicknell, Ind.....	1,073	15	10	25	17	12.5	29.5	5.1
Akron, Ohio.....	1,283	15	15.5	30.5	17	19.5	36.5	5.4
Teutopolis, Ill.....	835	15	5.3	20.3	17	6.5	23.5	5.1
Casey, Ill.....	863	15	5.3	20.3	17	6.5	23.5	5.0
Martinsville, Ill.....	870	15	5.3	20.3	17	6.5	23.5	5.0
Terre Haute, Ind.....	900	15	6	21	17	8	25	5.1
Greenville, Ill.....	781	15	5.3	20.3	17	6.5	23.5	5.5
Carterville, Ill.....	835	15	5.3	20.3	17	7.5	24.5	5.4
Newton, Ill.....	931	15	6.2	21.2	17	8	25	5.0
New Harmony, Ind.....	1,002	15	10	25	17	12.5	29.5	5.5
West Palm Beach, Fla.....	1,830	25	11.35	36.35	27	13.5	40.5	4.3

<sup>1</sup> Factor to Memphis, East St. Louis, or Jacksonville; includes 1.5 cents bridge toll via Memphis and 2 cents via St. Louis.

<sup>2</sup> Factor beyond Memphis, East St. Louis, or Jacksonville.

<sup>3</sup> Ton-mile earnings calculated on combination rate less the bridge toll, which does not accrue to the line-haul carriers.

In each combination the factor to the basing point is a commodity rate. The factor beyond is also a commodity rate, except to Belleville, Bicknell, Akron, New Harmony, and West Palm Beach. Effective June 25, 1918, under authority of general order No. 28, with few exceptions the commodity factors were increased 2 cents and the class factors 25 per cent.

Complainant submitted no evidence to show that the rates charged were unreasonable *per se*, but relied upon its contention that defendants misinterpreted and misapplied general order No. 28, providing for an increase of 2 cents in commodity rates on plaster, by adding that amount to each factor instead of but once to the combination. On various dates subsequent to the movement of these shipments

defendants amended their tariffs to provide for the addition of but 2 cents to the combinations in effect on June 24, 1918, except where the through charge is made of a combination of class and commodity rates, in respect of which a change from the basis applied to the shipments in issue which moved on such combination has not been made in all cases. It is defendants' contention that in the case of those commodities which were given a specific increase under general order No. 28 it was intended that such increase was to be applied to both factors of combination rates; that this so-called double increase did not result in unreasonable charges; and that subsequent reductions to the basis of a so-called single increase was in the nature of a general readjustment for the purpose of restoring former rate relationships, and should not be made the basis for an award of reparation.

In *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723, 726, we found that failure to strictly adhere to the terms of general order No. 28, the filing of which was not required by the federal control act, can not be construed as defeating the validity of rates filed by the President through his duly appointed agent. The issue before us is the justness and reasonableness of the rates assailed, and the manner in which they were arrived at is only one of the elements to be considered in determining that issue. *New York & Pennsylvania Co. v. Director General*, 58 I. C. C., 124, 128.

In addition to referring to the low ton-mile earnings as shown by the foregoing table, defendants introduced comparisons of the rates assailed with numerous rates on plaster, cement, brick, and other low-grade and heavy-loading building materials, both between the points here considered and for comparable distances in the same general territory, all of which tend to show that the rates assailed have been maintained on a relatively favorable basis. While reference was made by complainant in a general way to rates from producing points in Michigan and Ohio, which were increased only 2 cents over the rates in effect prior to June 25, 1918, during the period when complainant was required to pay the so-called double increase the record is altogether lacking in evidence to support a finding of unjust discrimination or undue prejudice, and an award of reparation for damages thereunder. Defendants' exhibits show higher earnings under rates from a number of points in Michigan, Ohio, Indiana, and Illinois than those accruing under the rates assailed.

Complainant refers to section 1 of agent Washburn's tariff I. C. C. No. 267, effective June 25, 1918, as establishing the illegality of the rates under attack. That section provides in substance that where the through charge on commodities therein named, including plaster,



is constructed on combination of separately established junction-point rates, the increased rate under general order No. 28 is to be determined by adding 2 cents, in the case of plaster, to the combination in effect on June 24, 1918. The tariff cited contains only rules for constructing combination rates and is confined to traffic moving between points in the southern region and between points in that and other regions. It is not referred to in any of the tariffs naming the applicable rates and has no bearing upon these shipments.

We find that the rates applicable were not unreasonable or otherwise unlawful. There were outstanding at the time of hearing either overcharges or undercharges on several of the shipments. These should be promptly adjusted. The complaints will be dismissed.

62 I. C. C.

Complainant refers to a contemporaneous commodity rate of 8 cents applying from Benton to Shreveport on crushed stone, also rated class E. In *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 515, we prescribed a slightly lower rate on sand and gravel than on crushed stone, from Waukesha, Wis., to Chicago, Ill., stating that these commodities are of the lowest-grade traffic and that the value of crushed stone is about twice that of sand and gravel. Defendants' witnesses testify that no crushed stone moves or has moved from Benton, and that the origin of the rate is probably attributable to the location of that point, intermediate between Shreveport and Little Rock, Ark., and other competitive points producing this commodity. Complainant also refers to rates on crushed stone applying over defendants' lines from Little Rock to a number of points in Louisiana, averaging 7.9 cents for an average distance shown as 217 miles.

Defendants urge that the issues in the Shreveport cases had to do essentially with the discriminatory character of the rates; that the commodity scale adopted on gravel was based on "missionary" rates then existing in the state of Texas, and that it is on too low a basis to be used as a measure for the rates from Benton to Louisiana points. Their witnesses testify that joint-line rates on gravel in Louisiana and from Arkansas to Louisiana are generally made on combination, and that the level of the gravel rates in those states has been held down by road-building operations and outstanding contracts for material based on existing rates. They refer to the commodity scale on gravel, 1.5 cents higher for a distance of 194 miles than the present Shreveport scale, proposed by the carriers in the supplemental proceeding in the *Natchez Case*, *supra*, pending when the instant case was heard, and contend that the rates from Benton to Shreveport should, in turn, be at least 1.5 cents higher for this distance than the commodity scale there approved for application between Natchez and western Louisiana. In the supplemental report in that case, since decided, 58 I. C. C., 610, we found the rates on gravel between Natchez and western Louisiana points unreasonable to the extent that they exceeded the rates contemporaneously in effect between Shreveport and points in Texas for like distances. Our order in the original proceeding in that case required the application of the Natchez class scale only to that portion of Arkansas south of the line of the Missouri Pacific extending through Gurdon and Camden, Ark., but we later stated in *Memphis-Southwestern Investigation*, *supra*, at page 522, " \* \* \* that any scale of class rates that is applied from Memphis to any part of Arkansas should cover the whole state." Under the Natchez

scale the joint-line class-E rate from Benton to Shreveport, 194 miles, is 26 cents.

For defendants it is testified that the average haul of gravel in this territory does not exceed 75 miles. The commodity scale approved in the *Natchez Case*, *supra*, extends up to 350 miles. They show that complainant's purchase of this gravel at Benton was occasioned by the flooding of pits in closer proximity to Shreveport, and ask that the prayer for commodity rates be dismissed, following *Gulf Pipe Line Co. v. T. & N. O. R. R. Co.*, 57 I. C. C., 437. In that case we refused to condemn the application of class rates to a shipment of wrought-iron pipe from Beaumont, Tex., to Midian, Kans., finding that it was an emergency shipment; but under the facts shown in the present record the cases are clearly distinguishable. The point of origin in that case was not a producing point, whereas there is a gravel pit at Benton.

We find that the rates applicable on complainant's shipments were unreasonable to the extent that they exceeded on the shipments which moved over the Missouri Pacific and Texas & Pacific, 7 cents per 100 pounds; on the shipments which moved over the Chicago, Rock Island & Pacific and Vicksburg, Shreveport & Pacific, 7.5 cents per 100 pounds; and on the shipments which moved over the Chicago, Rock Island & Pacific and Louisiana Railway & Navigation Company, 10 cents per 100 pounds; and that the present rates are and for the future will be unreasonable to the extent that they exceed or may exceed the rates contemporaneously maintained by defendants on the same commodity between Shreveport and points in Texas for like distances. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An order for the future will be entered.

No. 11534.

TRANSCONTINENTAL FREIGHT COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted February 19, 1921. Decided May 19, 1921.*

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Refusal of defendant to accept six carload shipments when tendered for transportation on June 24, 1918, after close of business, found not to have resulted in unreasonable or otherwise unlawful charges. Complaint dismissed.

*Nuel D. Belnap, John S. Burchmore, Luther M. Walter, and Borders, Walter, Burchmore & Collin* for complainant.

*John F. Finerty, Robert H. Widdicombe, and Royal McKenna* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, is a general freight forwarder at Chicago, Ill. By complaint filed June 9, 1920, it alleges that on June 24, 1918, it tendered six carloads of machinery, merchandise, iron, and steel to defendant at Chicago for transportation to various Pacific coast ports for export; that defendant refused to accept these shipments and to sign bills of lading covering the same; that on the following day increased rates became effective on such export traffic; and that by reason of these facts complainant was subjected to the payment of rates and charges which were illegal, unjust, and unreasonable. It asks reparation in the sum of \$1,663.07.

The cars were loaded at complainant's warehouse at Chicago, which is served by the Chicago & North Western, hereinafter called the North Western. Bills of lading therefor were submitted to defendant's agent about 5.20 p. m. on June 24, 1918, and the shipments were refused because tendered after the usual closing time. Effective on the following day rates were advanced under defendant's general order No. 28. The shipments went forward on July 1, 1918, and the rates in effect on that date were charged. Complainant's position is that, since the shipments were tendered on June 24, 1918, they should take the rates in effect on that date.

Defendant's rule, published in notices to the public, provided that the outbound freight yards of the North Western would be closed for the receipt of freight after 5 p. m. This rule had been in effect prior to federal control, and complainant's attention had been called to it about a year prior to June 25, 1918. It had, nevertheless, been complainant's practice to tender occasional shipments 15 or 20 minutes after the usual closing time, and these had always been accepted. In such instances complainant informed defendant's agent prior to the closing hour that bills of lading would be tendered after closing time. On June 24, 1918, complainant offered one car for shipment at 5.05 p. m., and bills of lading therefor were issued by defendant's agent. At the same time complainant informed this agent that the shipments in question would be ready within a few minutes, but when tendered they were refused because of specific instructions of defendant's foreman that no other bills of lading should be issued on that day.

Complainant does not show that defendant's rule governing the receipt of outbound freight was unreasonable, nor does it assail the measure of the rates exacted. It urges, in effect, that defendant's acceptance of occasional shipments after 5 p. m. constitutes a waiver or modification of the rule, and that refusal to accept these shipments was an unreasonable practice.

The record does not disclose that defendant had modified the rule as to closing time with respect to the general public, or that shipments had ever been accepted from others than complainant after closing time. Complainant's foreman in charge of outbound shipments testified that defendant's closing time was 5 p. m. Complainant knew that there was to be a general advance in rates on June 25, 1918, which undoubtedly influenced its efforts to induce acceptance of the shipments after closing time on June 24.

We have recognized the right of railroads to establish reasonable rules and regulations with respect to the time within which shipments shall be accepted. It is not shown that it was the general practice of defendant to accept shipments tendered after 5 p. m., and the acceptance of an occasional shipment from complainant after that hour does not establish the existence of such a practice.

The shipments were not accepted for transportation until July 1, 1918. It is well settled that the rate in effect on the date shipments are accepted for transportation is the legal rate.

We find that the rule under which acceptance of the shipments was refused on June 24 was not unreasonable and that the rates exacted were applicable.

The complaint will be dismissed.

No. 11546.

D'ARCY SPRING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MICHIGAN  
CENTRAL RAILROAD COMPANY.

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*Submitted February 15, 1921. Decided May 19, 1921.*

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Rate on pieces of iron and steel, in carloads, from Ann Arbor, Mich., to Kalamazoo, Mich., during federal control, found not unjust or unreasonable.  
Complaint dismissed.

*A. L. Watkins* for complainant.*L. P. Day* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in buying and selling scrap iron at Kalamazoo, Mich., alleges that the rates charged since June 25, 1918, for the transportation of scrap iron, in carloads, from Ann Arbor, Mich., to Kalamazoo were and are unjust and unreasonable, and asks for reparation and the establishment of a reasonable rate for the future. Except under circumstances not here present our jurisdiction over intrastate rates terminated with the ending of federal control. Only the rates in effect during the period of federal control will therefore be considered. They will be stated in amounts per long ton, unless otherwise indicated.

The shipments consisted of 11 carloads of small pieces of iron and steel, billed as scrap iron having value for remelting purposes only. These pieces were the residue from the stamping of the original metal. The cars moved wholly intrastate over the line of the defendant carrier, 106 miles. Charges were collected based on the sixth-class rate of 13 cents per 100 pounds, equivalent to \$2.60 per net ton, minimum 20 tons, applicable on scrap iron.

Complainant in its manufacturing business had used a part of the metal in some of the shipments where the pieces were large enough to permit punching. The remainder was sold to concerns in different parts of the country where it was remelted. The amounts used by

complainant varied from 5 to 50 per cent and probably the average was 25 per cent.

We have uniformly held that rates on scrap iron generally are understood to apply on scraps or pieces of steel or iron useful only for remelting. The phrase "value for remelting purposes only" defines the nature of the articles and does not make the rate to be applied dependent upon its use. *Watrous-Acme Mfg. Co. v. Pere Marquette R. R. Co.*, 37 I. C. C., 398, and *Weissbaum & Co. v. Director General*, 53 I. C. C., 681. A higher rate was applicable on pieces of iron and steel that could be used for purposes other than remelting. Some of the shipments were therefore undercharged.

Complainant compares the rate assailed with the rate of \$1.90, minimum 30 tons, on scrap iron or steel having value for remelting purposes only, from Grand Rapids, Mich., to Benton Harbor, Mich., 265 miles; also with a rate of \$1.50, minimum 30 tons, on this traffic, which complainant states was maintained by the Michigan Central from Grand Rapids to Kalamazoo, 162.4 miles. Defendants claim that the relatively low rate last mentioned was caused by competition with several other carriers having very much shorter hauls, and that in case any considerable traffic developed the rate would be restricted to apply over a shorter route via Hastings, Mich., and the Chicago, Kalamazoo & Saginaw, which is owned by the Michigan Central. They urge that the assailed rate was reasonable in view of the small volume of traffic over the route of movement. It was conceded that no uniformity exists at present in the application of scrap-iron rates in central territory. Lower rates in effect from and to some points have resulted from the heavy volume of traffic and, in the case of eastbound traffic from Chicago, Ill., have been compelled by keen competition.

We find that the rate assailed was not unjust or unreasonable. The complaint will be dismissed.

62 I. C. C.

No. 11576.<sup>1</sup>

PLANTERS FERTILIZER & PHOSPHATE COMPANY  
ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST  
LINE RAILROAD COMPANY, ET AL.

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*Submitted January 20, 1921. Decided May 20, 1921.*

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Rate on kainit, in carloads, from Norfolk, Va., to Charleston, S. C., found not unreasonable or otherwise unlawful. Complaints and petition in intervention dismissed.

*Harry F. Masman and Thos. J. Burke* for complainants and intervener.

*Henry Thurtell and H. L. Walker* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainants and intervener to the report proposed by the examiner.

Complainants, corporations dealing in fertilizers and fertilizer materials at Charleston, S. C., allege that the rate charged by defendants for the transportation of certain carloads of kainit from Norfolk, Va., to Charleston in February and March, 1920, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable rates for the future and to award reparation. The McCabe Fertilizer Company of Charleston intervened on behalf of complainants and seeks reparation. Rates will be stated in amounts per net ton and do not include the general increase of 1920.

Kainit is an imported product used as an ingredient of fertilizers by complainants and intervener, hereinafter called complainants. Ordinarily it moves directly by vessel from foreign ports to Norfolk, Charleston, or other south Atlantic ports at which fertilizer plants are located. These shipments were landed at Norfolk on account of

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<sup>1</sup>This report also embraces No. 11576 (Sub-No. 1), *Molony & Carter Company v. Director General, as Agent, and Southern Railway Company.*



congestion at the port of Charleston. They moved over the Southern, 599 miles. Charleston is 391 miles from Norfolk over the Atlantic Coast Line and 439 miles over the Seaboard Air Line.

Charges were collected at the applicable commodity rate of \$3.80, which also applied on fertilizers generally. Complainants contend that the rate was unreasonable to the extent that it exceeded a commodity rate of \$2.80 contemporaneously in effect on certain commodities classed as fertilizer materials from Norfolk to Charleston. The rate of \$3.80 would yield 9.7 mills per ton-mile over the short line, and yielded 6.4 mills per ton-mile over the route of movement. The average weight of the shipments exceeded 35 tons and the average earnings per car-mile were about 22.2 cents.

Complainants compare the rate charged with the lower rates from and to other points on fertilizer materials, some of which are of much greater value than kainit, and with a lower rate on live stock from the Virginia cities to Charleston, and show that defendants maintain the same rates on kainit as on fertilizer materials between many other points in the south. It appears that except on intrastate traffic in Georgia and Florida it is and always has been customary to maintain the same rates on kainit as on fertilizers.

Kainit may be used alone as a fertilizer, but it is usually mixed with other materials. It is frequently purchased by farmers for use in compounding their own fertilizers. This is also true of acid phosphate upon which the fertilizer basis of rates applied and applies from Norfolk to Charleston. It is not shown that any other shipments of kainit have moved between these points. Defendants formerly maintained rates on kainit and other imported fertilizer ingredients from Norfolk to Charleston lower than the rate attacked, partly with a view to their application on sporadic shipments such as these. The domestic rate on kainit was \$3 prior to June 25, 1918. In *Royster Guano Co. v. A. C. L. R. R. Co.*, 50 I. C. C., 34, we prescribed rates on commercial fertilizers from Norfolk to North Carolina points of \$3.40 and \$4.30 for distances equal to those from Norfolk to Charleston over the Atlantic Coast Line and the Southern, respectively. The rates established following our decision apply on commodities rated as fertilizers in the southern classification which includes kainit.

We find that the rate attacked was not and is not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaints and petition in intervention will be dismissed.

No. 11607.

## AULT &amp; WIBORG COMPANY

DIRECTOR GENERAL, AS AGENT, KANSAS, OKLAHOMA  
& GULF RAILWAY COMPANY, ET AL.

*Submitted February 25, 1921. Decided May 19, 1921.*

Rates on carbon black, in bags, in carloads, from Dewar, Okla., to Seattle, Wash., and to San Francisco, Calif., for export, found not unreasonable. Complaint dismissed.

*F. D. Reiley* for complainant.

*John F. Finerty* and *Royal McKenna* for all defendants except Kansas, Oklahoma & Gulf Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures printing inks, with principal offices at Cincinnati, Ohio. By complaint filed July 6, 1920, it alleges that the rates charged on two carloads of carbon black, in bags, shipped August 27, 1918, from Dewar, Okla., to Seattle, Wash., and on one carload, shipped March 28, 1919, to San Francisco, Calif., all for export, were unreasonable. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in amounts per 100 pounds.

Prior to June 25, 1918, the export rate on carbon black, in carloads, from Dewar to north Pacific and California coast ports was \$1, minimum 24,000 pounds. Effective on that date, this and other export rates were canceled pursuant to general order No. 28 of the Director General of Railroads. The domestic commodity rates, subject to the same minimum, which thereupon became applicable, were by the same order increased 25 per cent, and became to Seattle \$2.315, and to San Francisco \$2.125. These rates were assessed. On July 1, 1918, export rates were reestablished, including a commodity rate of \$2, with minimum increased to 30,000 pounds, from all transcontinental groups and the southeast to Pacific coast ports, but only over the lines of railroads under federal control. This rate was not

applicable on these shipments because at that time the originating carrier, the Missouri, Oklahoma & Gulf, now the Kansas, Oklahoma & Gulf, was not under federal control. On April 21, 1919, the \$2 rate was reduced to \$1.75. This was increased to \$2.335 on August 26, 1920, in the general increase authorized by us on July 29, 1920. On October 23, 1920, the former rate of \$2 was restored from groups D to J, inclusive, and is now in effect from Dewar to Pacific coast ports, the Missouri, Oklahoma & Gulf having become a party to the tariffs carrying these rates on September 30, 1919.

Complainant lays particular stress upon the fact that general order No. 28 resulted in increasing the charges on its shipments by more than 100 per cent over the charges that would have accrued at the export rate of \$1 previously in effect. That rate, it contends, increased by 25 per cent, would have been a reasonable rate. Many other rates were increased much more than 25 per cent by general order No. 28. The percentage of increase is not controlling if the resulting rates are reasonable. *Calumet & Arizona Mining Co. v. Director General*, 57 I. C. C., 332, 336. Complainant's comparisons do not indicate that the domestic commodity rates charged were unreasonable.

Defendants assert that the domestic rates are the normal rates to apply on this commodity; that the export rates in effect prior to general order No. 28, and since reestablished, were and are sub-normal, and were established primarily to equalize rates to the Orient by way of the Atlantic seaboard; and that with the elimination of water competition by reason of the war the continuation of these rates was considered unnecessary.

When the shipments moved carbon black was worth 11 cents per pound. The two carloads shipped to Seattle weighed approximately 25,400 pounds each, and that to San Francisco 33,581 pounds. They were worth \$2,794 and \$3,693.91 per car, respectively. The shipments to Seattle earned 23.5 cents per car-mile and 18.5 mills per ton-mile for a haul of approximately 2,500 miles. The shipment to San Francisco earned 29.7 cents per car-mile and 17.7 mills per ton-mile for about 2,400 miles. By reason of the lower carload minimum, the total charges collected on complainant's shipments were but \$18 in excess of the charges that would have accrued at the reestablished export rate of \$2.

We find that the rates assailed were not and that the present rate is not unreasonable.

The complaint will be dismissed.

No. 11786.  
MIDWEST REFINING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted March 17, 1921. Decided May 19, 1921.*

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Rate on fuel oil, in tank-car loads from Casper, Wyo., to Whiting, Ind., found unreasonable. Reparation awarded.

*Frederick D. Anderson* for complainant.

*R. B. Battey, John F. Finerty, and Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in refining and marketing petroleum oils, alleges that the rate of 54.5 cents charged by defendant on 38 tank-car loads of fuel oil shipped during September, 1918, from Casper, Wyo., to Whiting, Ind., was unreasonable and unduly prejudicial to the extent that it exceeded the rate of 45.5 cents subsequently established. Reparation only is sought. Rates are stated in cents per 100 pounds.

The shipments aggregated 3,211,793 pounds, and moved as routed over the Chicago, Burlington & Quincy from Casper to Eola, Ill., and the Elgin, Joliet & Eastern, hereinafter called the Joliet, to Whiting, a point within the Chicago, Ill., switching district. Charges were collected at the rate of 45.5 cents from point of origin to Eola, plus the local rate of 9 cents beyond. Contemporaneously the initial line maintained a rate of 45.5 cents to Whiting in connection with all delivering lines except the Joliet. Defendant states that had the shipments been routed over any other delivering line they would have been rerouted over the Joliet, under authority of general order No. 1 of the Director General of Railroads, inasmuch as during the period of federal control wherever it was practicable traffic was handled through the outer junctions to relieve the congested Chicago terminal district. Defendant admits that the omission of the Joliet as a party to the 45.5-cent rate was unintentional,

and states that as soon as the matter was brought to his attention the tariffs were amended, effective November 18, 1918, to include this route. He did not at the hearing oppose an award of reparation, but after service of the proposed report asked that a further hearing be had for the purpose of receiving evidence as to the intrinsic reasonableness of the rate. This request was denied.

We find that the rate assailed was unreasonable to the extent that it exceeded 45.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$2,890.46, with interest. An order awarding reparation will be entered.

62 I. C. C.

No. 11811.

PEORIA CORDAGE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, GALVESTON, HARRIS-  
BURG & SAN ANTONIO RAILWAY COMPANY, ET AL.

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*Submitted February 2, 1921. Decided May 20, 1921.*

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Rate on istle fiber, in carloads, from Laredo and Eagle Pass, Tex., to Peoria, Ill., found to have been unreasonable. Reparation awarded.

*R. M. Field* for complainant.

*A. B. Enoch* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

#### BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing cordage products at Peoria, Ill., by complaint filed September 16, 1920, alleges that the rate charged on 18 carloads of istle fiber shipped from Eagle Pass, Tex., and on 2 carloads from Laredo, Tex., to Peoria, during the period between July 25 and August 8, 1918, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 67 cents per 100 pounds. The prayer is for reparation only. Rates will be stated in amounts per 100 pounds.

The shipments originated in Mexico and moved over the defendant carriers' lines from Laredo and Eagle Pass to Peoria, 1,470 and 1,655 miles, respectively. Charges were assessed at the applicable fourth-class rate of \$1.575, minimum 30,000 pounds. The shipments from Laredo appear to have been overcharged.

Prior to June 25, 1918, an import rate of 45 cents, minimum 24,000 pounds, was applicable. On that date following general order No. 28 of the Director General of Railroads, this rate was canceled, thereby rendering applicable the fourth-class rate. On August 8, 1918, a commodity rate of 67 cents, minimum 24,000 pounds, was established. On November 29, 1919, the latter rate was reduced to 59.5 cents, minimum 27,000 pounds.

Complainant compares the rate assailed with the rates contemporaneously applicable from and to the same points on numerous other commodities possessing analogous transportation characteristics

which ranged from 47 to 85.5 cents. Comparisons are also made with a domestic commodity rate to Chicago, Ill., of 62.5 cents, minimum carload weight 30,000 pounds, on istle from Langtry, Uvalde, and Uvalde Junction, Tex., and from certain Texas points on cactus fiber, which is likewise used for cordage purposes; and with an import commodity rate of 25 cents, later increased to 32.5 cents, over certain routes from Texas and other Gulf ports to Peoria. The two cars from Laredo did not exceed the minimum of 30,000 pounds, and for the distance of 1,470 miles earned 21.5 mills per ton-mile and 32.1 cents per car-mile; at the rate of 67 cents, and minimum of 24,000 pounds, the ton-mile earnings would have been 9.1 mills and the car-mile earnings 10.9 cents. The 18 cars from Eagle Pass averaged 39,300 pounds, and for the distance of 1,655 miles yielded ton-mile earnings of 19 mills and average car-mile earnings of 37.1 cents; at the rate of 67 cents the ton-mile earnings would have been 8.1 mills and the car-mile earnings at the average weight, 15.8 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 67 cents per 100 pounds, minimum 24,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

62 I. C. C.

No. 11652.

## GALENA SIGNAL OIL COMPANY (OF TEXAS)

v.

DIRECTOR GENERAL, AS AGENT, COLORADO &  
SOUTHERN RAILWAY COMPANY, ET AL.

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*Submitted January 24, 1921. Decided May 19, 1921.*

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Rate on sulphuric acid, in tank-car loads from Denver, Colo., to Galena, Tex., found unreasonable. Reparation awarded.

*T. G. Shannon* for complainant.

*E. L. Wilkerson* for Magnolia Petroleum Company, and *Charles A. Bland* for Beaumont Chamber of Commerce, interveners.

*John F. Finerty, Alex. M. Bull, W. B. Knight, and H. M. Garwood* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. We have modified somewhat the conclusions suggested by him.

Complainant, a corporation refining crude petroleum at Galena, Tex., by complaint filed July 20, 1920, alleges that the rate of 41.5 cents charged by defendants on sulphuric acid, in tank-car loads, shipped from Denver, Colo., to Galena was and is unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate of the intermediate rates provision of the act to regulate commerce. We are asked to award reparation and to establish a rate of 81.5 cents. The Chamber of Commerce of Beaumont, Tex., and the Magnolia Petroleum Company of Chaison, Tex., intervened in support of the complaint. Rates are stated in cents per 100 pounds.

Thirty shipments, averaging about 75,000 pounds, moved between March 14, 1919, and May 17, 1920, and charges thereon were collected at the applicable joint commodity rate of 41.5 cents. A commodity rate of 81.5 cents, contemporaneously in effect from Denver to Beaumont and Port Arthur, Tex., applied as maximum at Houston and all intermediate points between Port Arthur and Texline, in the extreme northwestern part of Texas, 838 miles from Port Arthur. Galena is on a branch line of the Texas & New Orleans, 11.9 miles



east of Houston, and is not intermediate between Houston and Beaumont or Port Arthur. The 41.5-cent rate exceeded the aggregate of intermediate rates contemporaneously in effect, 31.5 cents from Denver to Houston and 6.5 cents beyond. A charge of \$15 per car contemporaneously applied between Galena and Houston on local traffic, but not on that from or to points beyond. The fourth section departure was removed by establishing a rate of 38 cents from Denver to Galena, effective August 10, 1920, and defendants on brief state that complainant is entitled to reparation to that basis. The 31.5-cent rate was increased to 39.5 cents August 26, 1920, and to 42.5 cents December 31, 1920. The latter rate was made applicable to Galena, thus removing the alleged undue prejudice, on which complainant mainly relied.

Defendants show that to 10 representative points intermediate between Texline and Port Arthur the 31.5-cent group rate yields 7.87 mills per ton-mile for the average distance of 800 miles. In the following table, compiled from defendants' exhibits, the ton-mile earnings on sulphuric acid from Denver, Chicago, and St. Louis to destinations in Texas are shown:

From—	To—	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Denver, Colo.....	Galena, Tex.....	1,090	<sup>1</sup> 31.5	5.78
Do.....	do.....	1,090	41.5	7.61
Do.....	Houston, Tex.....	1,078	31.5	5.84
Do.....	Port Arthur, Tex.....	1,182	31.5	5.33
St. Louis, Mo.....	Beaumont, Tex.....	772	31.5	8.16
Do.....	Port Arthur, Tex.....	791	31.5	7.96
Do.....	Houston, Tex.....	748	38	9.57
Do.....	Galena, Tex.....	780	38	9.36
Chicago, Ill.....	Beaumont, Tex.....	1,056	38	7.76
Do.....	Galena, Tex.....	1,108	41.5	7.40
Do.....	Houston, Tex.....	1,120	41.5	7.41
Do.....	Texas common-point territory.....		50	

<sup>1</sup> Rate sought.

Complainant's shipments were worth \$25 per ton f. o. b. Denver. Sulphuric acid moves in special equipment, which must be returned empty. Few claims for loss and damage are filed on such shipments. In *Western Chemical Mfg. Co. v. D. & R. G. R. R. Co.*, 40 I. C. C., 529, we found reasonable a rate of 33 cents on sulphuric acid from Louviers, Colo., 21 miles south of Denver, to Port Arthur. This rate was increased to 41.5 cents following general order No. 28 of the Director General of Railroads.

We find that the rate attacked was unreasonable to the extent that it exceeded 38 cents per 100 pounds, the aggregate of the intermediate rates; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged thereby in

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the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11977.

MEXICAN GULF OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MIDLAND VALLEY  
RAILROAD COMPANY, ET AL.

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*Submitted March 7, 1921. Decided May 19, 1921.*

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Rate on secondhand plate-iron tanks, knocked down, in carloads, from Watkins, Okla., to Port Arthur, Tex., found unreasonable. Reparation awarded.

*C. B. Ellis* for complainant.

*John F. Finerty* and *Alex. M. Bull* for Director General, as Agent.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions to the report proposed by the examiner were filed by the Director General, as Agent.

Complainant is a corporation producing and marketing petroleum and petroleum products. By complaint filed November 22, 1920, it alleges that the rate charged for the transportation of three carloads of secondhand plate-iron tanks, knocked down, from Watkins, Okla., to Port Arthur, Tex., shipped February 11, 1919, was unreasonable and unduly prejudicial. Reparation only is sought. Rates will be stated in cents per 100 pounds.

Watkins is on the Glenpool branch of the Midland Valley, about 5 miles from Jenks, Okla., the junction with the main line, and 15 miles from Tulsa, Okla. The shipments were consigned by the Gulf Pipe Line Company of Oklahoma to complainant in care of the Gulf Refining Company at Port Arthur, and were destined ultimately to Tampico, Mexico. They moved over the Midland Valley to Panama, Okla., and beyond over the Kansas City Southern and the Texarkana & Fort Smith, 597 miles. The shipments aggregated 258,429 pounds, and freight charges thereon in the sum of \$2,261.26

were collected at the applicable joint fifth-class rate of 87.5 cents. Both complainant and the consignor of the shipments are under a common corporate control, and the freight charges were finally borne by complainant. The applicable rate is assailed as unreasonable to the extent that it exceeded a commodity rate of 69 cents contemporaneously applicable on tanks to Port Arthur from Tulsa and Sand Springs, Okla., and subsequently established from Watkins.

It is the general practice when an oil field ceases production or when production diminishes to reduce the number of storage tanks and move the surplus to other fields. Anticipating these and other movements, complainant in April, 1917, requested the Midland Valley to establish from Watkins to Port Arthur and three other Texas points a commodity rate of 55 cents, which was the rate then applicable from Tulsa and Sand Springs. No action was taken upon this request. In October, 1918, a similar request was made of the Director General of Railroads for the establishment of commodity rates from Watkins to various Texas destinations, but not including Port Arthur. A commodity rate of 69 cents to Port Arthur and many other Texas points was thereupon established, effective February 27, 1919, from Watkins as well as from all other Oklahoma stations designated in the applicable tariff as composing groups A to I, which include a substantial area, extending as far north as the Kansas border, the distances in many instances being greater than that from Watkins.

The distances from Tulsa and Sand Springs to Port Arthur, over the lines of defendant carriers, are 603 and 610 miles, respectively, and thus greater than from Watkins. The earnings under the 69-cent rate from Watkins to Port Arthur based on the average weight of complainant's shipments would be \$594.39 per car, 99.56 cents per car-mile, and 2.31 cents per ton-mile. Complainant points out that this rate also applied from Sand Springs to Port Arthur in connection with the Missouri, Kansas & Texas to Houston, Tex., and the Southern Pacific beyond, a distance of 744 miles; that in the absence of a commodity rate a fifth-class rate of 87.5 cents would also have applied on tanks from Tulsa and Sand Springs; and that contemporaneously a commodity rate of 48 cents was applicable on iron or steel plate, straight or bent, punched or unpunched, in carloads, from Kansas City, Mo., to Port Arthur, over various routes.

Defendants admit that the rate assailed was unreasonable to the extent that it exceeded a combination rate of 83 cents, composed of the fifth-class rate of 14 cents for a distance of 15 miles from Watkins to Tulsa, plus the commodity rate of 69 cents from Tulsa to Port Arthur. Exhibits setting forth specific and distance fifth-class

rates applicable chiefly between points in the southwest, some of which were prescribed by us, were offered to show that the rate assailed compared favorably with the rates cited for similar distances, and that it was reasonable as a class rate. The issue is not whether the rate assailed was reasonable as a class rate, but whether, however denominated, it was reasonable for application on these shipments.

Defendants suggest that the 69-cent rate contemporaneously in effect from Tulsa and Sand Springs was published for the movement of new tanks manufactured at those points, but this is not clearly established of record. As defendants state, these were the only points in group H, in which group Watkins is located, which had commodity rates to Port Arthur at the time of movement, although a rate of 69 cents also applied from Cleveland, Okla., in group C.

We find that the rate assailed was unreasonable to the extent that it exceeded 69 cents per 100 pounds; that complainant made the shipments as described and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$478.10, with interest.

An order awarding reparation will be entered.

62 I. C. O

No. 11231.

## SUZUKI &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT, WHARTON &  
NORTHERN RAILROAD COMPANY, ET AL.

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*Submitted March 3, 1921. Decided May 19, 1921.*

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Rate on pig iron, in carloads, from Wharton, N. J., to Seattle, Wash., for export, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*Gilroy & Townsend and O. W. Eggers* for complainants.  
*John F. Finerty* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner, and the case was orally argued.

Complainants are Yone Suzuki, Fujimatsu Yanagida, and Nawokichi Kaneko, copartners trading under the firm name of Suzuki & Company, with offices in New York, N. Y., and are engaged in the import and export business and in the construction and operation of steamships. By complaint, as amended, they allege that the rates charged by defendants on numerous carloads of pig iron shipped during the period from August, 1917, to February, 1918, from Wharton, N. J., to Seattle, Wash., for export, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is asked. Rates are stated in cents per 100 pounds, except as otherwise noted.

The shipments apparently originated on the Wharton & Northern and were turned over by that carrier at Wharton to the Central of New Jersey and the Delaware, Lackawanna & Western. They moved thence over the lines of these and other defendants, and charges were collected generally at the applicable combination rate of 63.88 cents, composed of a commodity rate of \$5.35 per long ton, equivalent to 23.88 cents per 100 pounds, from Wharton to Chicago, and an export commodity rate of 40 cents beyond. The Wharton & Northern was not a party to the rate from Wharton. The record does not definitely disclose the charge made by that carrier for the service which it performed or by whom the charge,

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if made, was paid. Complainants attack only the rate of 63.88 cents charged by defendants other than the Wharton & Northern. Apparently there are undercharges and overcharges on certain of the shipments, which should be promptly adjusted.

A joint export rate of 52.6 cents on manufactured iron and steel articles, including billets, applied from Wharton to Seattle during the period covered by the complaint. Complainants contend that the rate assailed was unreasonable to the extent that it exceeded 47.6 cents, or a differential of 5 cents under the export rate on manufactured iron and steel articles.

Numerous rates, including some export and import rates, on manufactured iron, billets, scrap iron, and pig iron from and to various points are instanced by complainants to show that the rates on pig iron are uniformly lower than rates on the other articles specified. They also call attention to export rates established by defendants on April 21, 1919, from Wharton to Seattle, of 60 cents on manufactured iron and billets and 55 cents on pig iron; and urge that the difference of 5 cents in these rates in effect shows that the propriety of the differential claimed by complainants is recognized by defendants. They also point out that pig iron is a low-grade commodity which loads heavily, and, not being susceptible to damage, can be transported in any type of equipment.

Defendants state that normally export rates to Pacific coast ports are compelled by competition through Atlantic ports; that there was no such compelling competition when these shipments moved, because ocean transportation had been disrupted by the then existing world war, and no justification existed at that time for an export rate from Wharton to Seattle on pig iron or the continued maintenance of the 52.6-cent rate on iron and steel articles mentioned by complainants.

A witness for the Central of New Jersey testified that he knew of no movement of pig iron from Wharton to Seattle either before or after the period during which these shipments moved, and that the export rate of 55 cents established April 21, 1919, on the theory that competition would be resumed through the Atlantic ports, had remained a mere paper rate. The rate assailed may be compared with contemporaneous domestic commodity rates from Wharton to Seattle on manufactured iron and steel articles, in carloads, such as angles, bars, beams, billets, and girders. These rates were 75 cents, minimum 80,000 pounds; 85 cents, minimum 50,000 pounds; and 90 cents, minimum 40,000 pounds, and are said to be depressed because of previous water competition.

On traffic to Chicago, Wharton generally takes the New York basis as it did on billets and angles, whereas pig iron was accorded the Philadelphia rate, approximately 2 cents under the New York rate.

Defendants contend that the aggregate of this subnormal rate to Chicago and the export rate beyond did not constitute an unreasonable rate.

The applicable rate of 63.88 cents yielded earnings of 4.17 mills per ton-mile and, based upon an approximate average loading of 92,000 pounds, 19.16 cents per car-mile over the route comprising the Central of New Jersey and connections, a distance which the record shows as 3,067 miles.

We find that the applicable rate was not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

62 I. C. C.

No. 10255.

J. D. HOLLINGSHEAD COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ADIRONDACK &  
ST. LAWRENCE RAILROAD COMPANY, ET AL.

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Submitted February 8, 1919. Decided May 27, 1921.

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Rates on slack-barrel staves, in carloads, from Crowder, Miss., on the Batesville Southwestern Railroad, 16.3 miles from Batesville, Miss., its junction point with the Illinois Central Railroad, to interstate points, found not unreasonable but unduly prejudicial to the extent that they exceed the contemporaneous group rates from Batesville and Charleston, Miss., to the same destinations. Relationship of rates prescribed for the future.

*Clifford Thorne* for complainant.

*Edward D. Mohr* and *A. P. Humburg* for Director General of Railroads and defendant carriers under federal control; and *Sivley, Evans & McCadden* for Batesville Southwestern Railroad.

*George B. Webster* for Charleston Cooperage Company; and *George Land* for Lamb-Fish Lumber Company, interveners.

#### REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

##### BY DIVISION 2:

Complainant, a corporation dealing in cooperage stock at Crowder, Miss., by complaint filed September 6, 1918, alleges that the defendants' rates on staves, in carloads, from Crowder to points in western trunk line, central, and eastern trunk line territories, and to New Orleans, La., are unjust and unreasonable, and that they subject complainant to undue prejudice and disadvantage to the extent that they exceed the rates contemporaneously applicable from Batesville, Charleston, and Greenwood, Miss. We are asked to establish reasonable and nonprejudicial rates for the future.

The Charleston Cooperage Company and the Lamb-Fish Lumber Company, engaged in the lumber and cooperage business at Charleston, intervened to resist any increase in the rates from that point. Rates are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Crowder is the southern terminus of the Batesville Southwestern Railroad, which extends northward to Batesville, 16.3 miles, where it  
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connects with the main line of the Illinois Central. Batesville is 59 miles south of Memphis, Tenn. Charleston is the northern terminus of a branch line of the Yazoo & Mississippi Valley, a subsidiary of the Illinois Central, extending 26 miles from that point to Philipp, Miss. Greenwood is a junction point of the Yazoo & Mississippi Valley and the Southern Railway in Mississippi, 18 miles south of Philipp. The distance from Crowder to northern points through Memphis is 57 miles less than that from Charleston and 49 miles less than that from Greenwood. The distance from Crowder to New Orleans is 26 miles greater than that from Charleston and 70 miles greater than that from Greenwood.

Complainant manufactures slack-barrel staves at Crowder from timber obtained in the vicinity. Its plant has been in operation since January, 1917, and has a daily output of about 80,000 staves or 1.25 carloads. When the plant commenced operations there were no through rates on staves from Crowder. From other points in the Mississippi Valley staves were accorded the lumber rates, which from Crowder to the destinations in question were 3.5 cents higher than from Batesville, that being the local rate. Shortly thereafter through rates, 2 cents higher than from Batesville, were established from Crowder to points on and north of the Ohio River and on and east of the Mississippi River and to points on the Illinois Central west of the Mississippi River.

Points on the lines of the Illinois Central system in the Mississippi Valley are grouped in respect of rates to the Ohio River crossings and points beyond. The rates to points beyond the crossings are generally based on the rates to and from Cairo, Ill. Prior to *Increased Rates, 1920, supra*, the rate to Cairo from the territory extending from the Mississippi-Tennessee line along the lines of the Illinois Central to Vicksburg, Miss., and to within a short distance of Jackson, Miss., was 17.5 cents. This rate applied generally from all points on the main lines of that carrier and, with several exceptions, from points on its branch lines within the group boundaries. The distances from the junction points to some of the points on the branch lines accorded the group rate are considerably greater than that from Batesville to Crowder. Batesville, Charleston, and Crowder are well within the group boundaries, and while the first two named points are accorded the group rates, the rates from Crowder to points in central and eastern trunk line territories exceed the group rates by 2 cents. Greenwood is also in this group and to Cairo takes the group rate, but to other Ohio River crossings and to central territory the rates from Greenwood are generally 1 cent higher than the group rates. To eastern trunk line territory Greenwood takes the group rate. To New Orleans the rate from

Crowder was 4 cents higher than the blanket rate from Batesville, Charleston, Greenwood, and other group points on the Illinois Central.

To points in western trunk line territory the same grouping of originating points is not maintained, and the rates from Crowder bear no uniform relation to the rates from Batesville. In some instances the rates to this territory from Crowder are made 2 cents over Charleston. To a number of points the rates are made combinations over Batesville or other points.

Complainant's chief competitor is at Charleston. The air-line distance from Crowder to Charleston is 10 miles. The mills at both points obtain their raw material from the same body of timber. Crowder also meets competition at Greenwood.

Complainant insists that the Batesville Southwestern is a branch line of the Illinois Central and that Crowder should be accorded the same rates as other group points on that line; and also that, regardless of whether the Batesville Southwestern is a branch of the Illinois Central, Crowder being within the group boundaries, should be accorded the group rates. The Batesville Southwestern is leased and operated independently of the Illinois Central. Its entire capital stock is owned by the Mississippi Valley Corporation, the capital stock of which is owned by the Illinois Central. It was formerly under federal control.

Defendants urge that while it is customary to apply the junction-point rates from points on branch lines operated by the Illinois Central and Yazoo & Mississippi Valley, higher rates are generally maintained from points on independently operated short-line connections. They show that the rates from points on 66 independent short-line connections of the Illinois Central and various other trunk lines in Mississippi, Louisiana, Alabama, Georgia, Florida, Arkansas, and Missouri are higher than from the junction points and insist that a higher rate for the two-line haul than for a one-line haul is justified. In answer to this it is observed that there is no substantial difference between the cost of service from points on short-line connections not operated by the trunk lines and that from points on branch lines. It is also stated that the average haul on complainant's shipments is about 900 miles, and it is argued that the distinction between one-line and two-line hauls for such distances loses its significance. In this connection reference is made to our decision in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, where we said that when distances of over 500 miles are involved the fact that the service is by two lines is largely negligible.

A witness for defendants testified that by reason of the higher basis of rates from Crowder complainant secured its timber at a price con-

siderably less than that of the timber used at Charleston and Greenwood, and it is argued that if the rates were equalized Crowder would have a commercial advantage over Charleston and Greenwood. Such a contention is immaterial to the issue in this case. We have repeatedly held that it is not our duty to inquire into or adjust the relative advantages or disadvantages resulting from purely business or commercial conditions.

The material facts in this case are substantially the same as those in *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485, and warrant a like conclusion.

We find that the rates assailed are not unreasonable but that they are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the group rates on like shipments contemporaneously maintained from Batesville and Charleston to the same destinations. An appropriate order will be entered.

COMMISSIONER DANIELS dissents.

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No. 11104.<sup>1</sup>

E. I. DU PONT DE NEMOURS &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST  
LINE RAILROAD COMPANY, ET AL.

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*Submitted December 16, 1920. Decided May 19, 1921.*

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Joint rates applicable on lumber, in carloads, from certain points in South Carolina, North Carolina, and Virginia to Carney's Point, N. J., found unreasonable and unlawful and the rates charged on similar shipments to Penns Grove, N. J., found illegal. Reparation awarded.

*Harvey S. Farrow* for complainant.*Alex. M. Bull* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

Complainant, a corporation manufacturing explosives at Carney's Point, N. J., by complaints seasonably filed, as amended, attacks the rates charged on lumber, in carloads, shipped between September 22, 1917, and June 22, 1918, from certain points in South Carolina, North Carolina, and Virginia to Carney's Point and Penns Grove, N. J., alleging that the rates to Carney's Point were unreasonable and in violation of the fourth section of the interstate commerce act and that the rates to Penns Grove were illegal. Reparation and the establishment of reasonable and nonprejudicial rates to Carney's Point are asked.

The shipments, 48 in number, originated at Wade, Clinton, Four Oaks, Fayetteville, Stedman, Antryville, Faisons, Jonesboro, Roseboro, Dunn, Owen, Polkton, Clayton, Auburn, and Linden, N. C., Sumter, Sellers, and Booth, S. C., and Waverly, Va. They moved over defendant carriers' lines to Carney's Point or Penns Grove via Pinners Point, Norfolk, or Richmond, Va. The joint rates applicable on the shipments to Carney's Point via Pinners Point and Norfolk exceeded and the present rates exceed the aggregates of the intermediate rates contemporaneously in effect to and beyond those

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<sup>1</sup> This report also embraces No. 11104 (Sub-No. 1), Same v. Director General, as Agent, Seaboard Air Line Railway Company, et al.; No. 11104 (Sub-No. 2), Same v. Director General, as Agent, Southern Railway Company, et al.; and No. 11104 (Sub-No. 3), Same v. Director General, as Agent, Norfolk & Western Railway Company, et al.

points. These deviations from the provisions of the fourth section were not protected by appropriate applications and were and are unlawful. They should be promptly corrected. At the hearing it was conceded by counsel for defendants that the joint rates to Carney's Point via Pinners Point and Norfolk were unreasonable to the extent that they exceeded the aggregate of the intermediate rates, and that the shipments to Penns Grove, on which combination rates were assessed, were entitled to the lower joint rates contemporaneously in effect. A statement showing the details of the shipments has been filed in accordance with an agreement reached at the hearing.

We find that the joint rates applicable to the shipments to Carney's Point were unreasonable and unlawful to the extent that they exceeded the aggregates of the intermediate rates subject to the act contemporaneously in effect over the routes of movement to and beyond Pinners Point or Norfolk, and that the charges collected on the shipments to Penns Grove were illegal to the extent that they exceeded those which would have accrued on the basis of the joint rates contemporaneously in effect. We further find that the shipments were made as described and that complainant paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis of the rates herein found legal and reasonable; and that it is entitled to reparation, with interest, as follows:

From Atlantic Coast Line Railroad Company; Northwestern Railroad Company of South Carolina; Virginia-Carolina Southern Railroad Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and West Jersey & Seashore Railroad Company-----	\$74.34
From Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and West Jersey & Seashore Railroad Company-----	88.46
From Norfolk & Western Railway Company; Norfolk Southern Railroad Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and West Jersey & Seashore Railroad Company-----	10.01
From James C. Davis, Director General of Railroads, as Agent-----	17.20
From James C. Davis, Director General of Railroads, as Agent-----	779.31

Collection of any undercharges should be waived. An order awarding reparation will be entered.

No. 12214.

# **SURCHARGE FOR TRANSPORTATION OF PASSENGERS IN SLEEPING OR PARLOR CARS BETWEEN POINTS IN THE STATE OF ALABAMA.**

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*Submitted May 31, 1921. Decided June 14, 1921.*

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Charges for the transportation of passengers in sleeping and parlor cars required by state authority to be maintained by the respondent steam railroads within the state of Alabama found to be lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Charges prescribed which will remove such preference, prejudice, and discrimination.

*Harwell G. Davis* and *Hugh White* for Alabama Public Service Commission.

*Nelson W. Proctor* and *Charles J. Rixey, jr.*, for all respondent carriers.

## **REPORT OF THE COMMISSION.**

### **BY THE COMMISSION:**

This proceeding is an investigation under the provisions of section 13 of the interstate commerce act upon petition filed by steam railroads operating within the state of Alabama to determine whether the fares and charges maintained by them for the transportation of passengers in the state of Alabama under denial by the Alabama Public Service Commission of the request of such carriers for permission to establish a surcharge upon passengers traveling intrastate between points in Alabama in sleeping and parlor cars amounting to 50 per cent of the charge for space in such cars causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue, unreasonable, and unjust discrimination against interstate commerce; and to determine what charges shall be prescribed in order to remove such advantage, preference, prejudice, or discrimination, if any be found to exist.

In *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, we authorized all steam railroads subject to our jurisdiction to establish a surcharge amounting to 50 per cent of the charge for space in sleeping  
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and parlor cars, to accrue to such rail carriers. The record upon which we based our report in Ex Parte 74 is a part of the record in this proceeding. This surcharge became effective interstate on August 26, 1920. On the same date the surcharge, together with the increased rates, fares, and charges authorized by us in Ex Parte 74, went into effect within the state of Alabama with the temporary approval of the Alabama commission, and subsequently that commission approved the intrastate application of the increased rates, fares, and charges referred to, except the surcharge, for a period of six months from November 1, 1920. As to the surcharge, a rehearing was granted by the Alabama commission, but that body adhered to its previous holding and ordered the discontinuance of the surcharge intrastate on and after December 23, 1920.

The evidence introduced by respondents is similar to that considered by us in other proceedings of this nature. It is shown that the inability to collect the surcharge within Alabama frequently results in the imposition of higher transportation charges for interstate journeys between Alabama and adjoining states than for intrastate movements within the state for the same or greater distances. Thus a passenger riding in a Pullman car from Montgomery, Ala., to Bainbridge, Ga., a distance of 174.3 miles, is charged \$6.28 for railroad fare and a surcharge of 45 cents, total \$6.73, while one traveling from Montgomery to Mobile, Ala., a distance of 178.4 miles, pays railroad fare amounting to \$6.44 and no surcharge. A Pullman passenger from Mobile to Birmingham, Ala., a distance of 276.1 miles, pays a railroad fare of \$9.56 and \$1.85 for a parlor car seat, total \$10.91. The distance from Pensacola, Fla., to Birmingham is 260.1 miles, but a person making that journey on the same train as the Mobile passenger for the greater part of the route would be charged \$9.39 for railroad fare, \$1.30 for a parlor car seat, and a surcharge of 65 cents, total \$11.34. Mobile and Pensacola compete commercially. Respondents contend that an undue preference is given to the former point under the existing relationship between intrastate and interstate charges applicable to sleeping and parlor car passengers.

The refusal of the Alabama commission to authorize the surcharge reduces the additional revenue which its establishment was intended to produce. During the months of September, October, and November, 1920, when the surcharge was in effect within the state, the Louisville & Nashville realized \$8,168.65 from this source, a monthly average of \$2,722.88. From these figures that carrier estimates that the application of the surcharge to intrastate business would increase its revenue in the sum of \$32,674.56 annually. A partial check of the intrastate Pullman passengers on Louisville & Nashville trains

from April 9 to April 15, 1921, inclusive, indicates that inability to assess the surcharge resulted in a loss of \$641.78 in that period. Using this amount as a weekly average produces a total of about \$33,300 per annum. The combined loss of revenue to all respondents is estimated at about \$44,000 per year, based on figures for the period during which the surcharge was collected in Alabama.

Another source of financial loss to respondents is the ability of interstate travelers to avoid full payment of the surcharge on a through journey by paying combinations of local Pullman fares to and from border-line points. In this way a passenger from Louisville, Ky., to Mobile can reduce his total transportation charge from \$26.32 to \$24.94 by paying combination Pullman fares to and from Decatur, Ala.

So far as the record shows, respondents operate but three Pullman car routes between intrastate points alone, and on those three routes the cars are hauled in interstate trains. All other sleeping or parlor cars operated by them in Alabama are used for the transportation of intrastate and interstate passengers alike. It is therefore apparent that there are no transportation or traffic conditions which justify exemption of the intrastate passengers from the surcharge.

At the hearing the Alabama commission filed pleas to our jurisdiction and a motion to dismiss respondents' petition on the ground that the issue presented herein is one involving only intrastate commerce which we have no authority to consider. This question was fully discussed in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, and *Intrastate Rates within Illinois*, 59 I. C. C., 350. It is further contended that we have no jurisdiction because respondents have not taken advantage of their right of appeal to the courts of Alabama from the decision of the Alabama commission under the statutes of that state. Similar contentions have been dealt with in *Arkansas Rates and Fares*, 59 I. C. C., 471, and other cases.

The only evidence submitted by the Alabama Public Service Commission consists of a copy of the record of the proceedings before that body upon which the surcharge was found to be unreasonable. After giving due consideration to that record we see no occasion to modify the views expressed on pages 241-242 of our report in *Increased Rates, 1920, supra*, wherein we authorized the establishment of the surcharge between interstate points.

We find that the surcharges made by the respondent steam railroads under Ex Parte 74, and now in effect, upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce, and that the failure of respondents, according as they participate in the transportation, to make corre-

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sponding surcharges upon passengers so traveling in intrastate commerce within the state of Alabama has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Alabama and between points in the state of Alabama and points in other states; in undue preference of and advantage to persons so traveling intrastate in Alabama; and in unjust discrimination against interstate commerce.

We further find that the undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid and now in effect upon passengers so traveling in interstate commerce.

We further find that whether the aforesaid charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

The above findings, abundantly supported by the record, are without prejudice to the right of the authorities of the state of Alabama or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate charges on the ground that the latter are not related to the interstate charges in such a way as to contravene the provisions of the interstate commerce act.

Tariffs in accordance with these findings may be made effective upon not less than five days' notice. An appropriate order will be entered.

No. 10387.

EMPIRE STEEL &amp; IRON COMPANY

v.

DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY  
OF NEW JERSEY, ET AL.

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Submitted May 6, 1921. Decided June 14, 1921.

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The maintenance by defendants of junction-point rates on coal to points on the Morristown & Erie Railroad while contemporaneously refusing to maintain such rates to points on the Mount Hope Mineral Railroad found upon rehearing not to be unduly prejudicial. Finding on this issue in original report, 56 I. C. C., 158, reversed and complaint dismissed.

*Charles MacVeagh* and *Charles S. Belsterling* for complainant.

*W. J. Larrabee* for Delaware, Lackawanna & Western Railroad Company.

*A. H. Elder* for Central Railroad Company of New Jersey and other defendants.

## REPORT OF THE COMMISSION ON REHEARING.

CLARK, *Chairman*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainant and the case was orally argued before us.

In our original report, 56 I. C. C., 158, we found among other things "that the maintenance of the junction-point rates on coal to points on the Morristown & Erie Railroad, while contemporaneously refusing to maintain the junction-point rates on coal to points on the Mineral Railroad is unduly prejudicial" and ordered that this undue prejudice be removed. Upon petition of defendants we postponed the effective date of the original order in so far as it related to the finding quoted and rehearing was had solely upon the question of whether or not that finding should be modified. The issues in the original proceeding were numerous and complicated and reference will here be made only to such facts therein considered as are necessary to an understanding of the question now before us. Rates are stated herein in amounts per long ton, and do not include the general increases authorized by us on July 29, 1920.

The Mount Hope Mineral Railroad, hereinafter termed the Mineral, is about 4 miles in length, and extends from a connection  
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with the Central Railroad of New Jersey and the Delaware, Lackawanna & Western, at Wharton, N. J., to Mount Hope, N. J. The two carriers last named will hereinafter be referred to as the Central and Lackawanna, respectively. The principal tonnage originating on the Mineral, iron ore and crushed rock, is furnished by the Empire Steel & Iron Company and the Thomas Iron Company, which companies own the entire outstanding capital stock of the Mineral. There were no joint rates in effect over the trunk lines and the Mineral. In the original complaint it was alleged that the combination rates applied on all traffic from and to complainant's mines at Mount Hope were unreasonable, unjustly discriminatory, and unduly prejudicial. Complainant asked that the rates applicable from the junction, Wharton, be extended to points on the Mineral, and that joint through rates be established on certain specified commodities. In support of its allegation of undue prejudice complainant referred to certain other short lines, said to be similarly circumstanced to the Mineral, which were accorded joint rates with, and whose charges were absorbed by the trunk line connections. We denied the prayer for joint rates and held generally that the rates attacked had not been shown to be unreasonable or unduly prejudicial, the only exception being the finding with respect to rates on coal. This issue is now before us on a more comprehensive record.

The Morristown & Erie Railroad, hereinafter referred to as the Morristown, is 10.5 miles long and extends from Morristown, N. J., where it connects with the Lackawanna, to Essex Fells, N. J., where it connects with the Erie. The road is owned by interests which also control several paper mills located on the line at or near Whippany, N. J., 4 miles from Morristown. The manufacture of paper is the chief industry on the line and furnished the largest tonnage, the only other important industries being the plants of three large oil companies. The total tonnage of the road for the first three months of 1920 was 62,923 tons, of which 13,092 tons were handled for the proprietary interests. With respect to rates on coal we said in our previous report: "Tariffs on file with us show the junction-point rate on coal to points on the Morristown & Erie."

The rate structure on both bituminous and anthracite coal to destination points in this general territory is now explained in detail of record. There is applicable on bituminous coal from the Clearfield region of Pennsylvania to all stations on the main line of the Morristown & Essex division of the Lackawanna from Broadway, N. J., east through Wharton to Rockaway, N. J., a total distance of about 37 miles, a rate of \$2.40. Rockaway is 5 miles east of Wharton, the junction of the Lackawanna and Central with the Mineral. This rate applies also to points on the Chester branch of

the Lackawanna, which extends southward a distance of 10 miles from a connection with the main line just west of Wharton. To points on the Sussex branch, which runs in a northerly direction from Netcong, 8 miles west of Wharton, the rate is \$2.50 to Newton, 12 miles from the junction at Netcong, and \$2.70 to Branchville, 3 miles beyond Newton. The rate to certain points on the Lackawanna east of Rockaway is \$2.50. The rate adjustment on anthracite coal is not so different as to warrant detailed description, the rate of \$1.70 per ton from the Wyoming region being applicable to practically the same destinations in this territory as is the \$2.40 rate on bituminous coal from the Clearfield region. The application of the junction-point rates to points on the Chester branch of the Lackawanna is said to be due to the competition of the Central which parallels that branch, the stations at Chester being only 1.5 miles apart. The haul of the Lackawanna to points on that branch is southbound, while the haul of the Central is northbound, Chester being nearer the coal fields via the Central than is Wharton.

Morristown, the junction of the Morristown with the Lackawanna, is 10 miles east of Wharton, to which point the rate on bituminous coal from the Clearfield region, as stated, is \$2.40. The rate to Morristown is \$2.70, and this rate applies also to Whippany, 4 miles from the junction, the only important consuming point local to the Morristown. Practically all the bituminous coal consumed at points on the Morristown reaches that line via the Lackawanna, 21,225 tons having been so delivered in 1919 and 11,334 tons during the first three months of 1920. The Erie, which makes delivery to the Morristown at Essex Fells, maintains a rate of \$2.70 to Morristown, Whippany, and Beaufort, the latter being a station on the Morristown 9 miles from Morristown and 1.5 miles from Essex Fells. It maintains a rate locally to Essex Fells of \$2.60 from mines on its own rails and from mines on the Baltimore & Ohio. Practically all of the 13,219 tons of anthracite coal handled by the Morristown in 1919 moved to Essex Fells via the Erie, over which route a rate of \$1.90 is maintained to all stations on the Morristown. The Lackawanna applies the Morristown rate of \$1.90 on anthracite coal to all stations on the Morristown except Essex Fells, to which point it publishes no rate. The Erie is not a defendant herein.

The paper mills on the Morristown are all located at or near Whippany. Their daily output is about 200 tons of paper products, in the manufacture of which approximately the same tonnage of coal is consumed. The Whippany mills compete with mills at Bogota and Newark, N. J., to which points the rate on bituminous coal is \$2.50 and on anthracite coal \$1.90. The rates to Whippany are \$2.70 and \$1.90, respectively.

The local rates of the Mineral on coal from Wharton to points on its rails are 25 and 27 cents a ton. The Lackawanna delivers practically no bituminous coal to the Mineral, and the 465 tons of bituminous coal delivered to it by the Central in 1919 were consigned to the two proprietary companies and the Mineral itself. The Central in 1919 delivered to the Mineral 696 tons of anthracite coal and for the first six months of that year the Lackawanna delivered 8,842 tons, practically all of which was consigned to the Empire and Thomas companies. One of the Empire mines uses anthracite coal to generate electric power, and the Empire company sells anthracite coal at its general store.

It will be observed, therefore, that the coal consumed on the Mineral is largely anthracite, while that consumed on the Morristown is principally bituminous, the Lackawanna in each case making delivery to the short line. The Lackawanna fears that if it were to comply with our order by canceling joint rates with the Morristown a large part of the bituminous tonnage would be lost to it and routed over the Erie; that if joint rates via both the Lackawanna and the Erie were canceled and the combination rates made applicable the mills at Whippany would move to Newark; and that if the junction rates were extended to points on the Mineral the integrity of rates to the Sussex branch points, affecting more than 65,000 tons of bituminous coal now handled by the Lackawanna, would be jeopardized. The rates to points on the Sussex branch are from 10 to 30 cents higher than the rates to the junction, and some of the stations on that branch are nearer to the mines than are points on the Mineral. It is perhaps unnecessary to state that the fears of the defendants could afford no justification for the maintenance to points on the Mineral of rates that are unreasonable or unduly prejudicial. The present record shows that the circumstances surrounding the movement of both kinds of coal to points on the Morristown and on the Mineral are substantially different. The Morristown serves as a connecting link between the Erie and the Lackawanna, producing a competitive condition that does not exist on the Mineral. The Lackawanna meets this competitive condition at Morristown and Whippany by maintaining to those points the same rates as are maintained by the Erie. In so doing it produces no situation of which the Mineral or shippers on that line may justly complain. There are no industries on the Morristown which compete with industries on the Mineral. The local rate of the Mineral to Mount Hope, formerly 17 cents, is now 27 cents, and receivers of coal at that station pay 3 cents a ton less on bituminous coal and 7 cents more on anthracite coal than do receivers of coal on the Morristown.

Upon consideration of the amplified record, we find that defendants' joint rates on coal to points on the Morristown & Erie Railroad do not result in undue prejudice to complainant or to receivers of coal on the Mount Hope Mineral Railroad. An order will be entered dismissing the complaint.

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No. 10236.

DIAMOND ALKALI COMPANY

v.

FAIRPORT, PAINESVILLE & EASTERN RAILROAD  
COMPANY, DIRECTOR GENERAL, ET AL.

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*Submitted May 6, 1921. Decided June 14, 1921.*

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Upon further hearing, just, reasonable, and equitable divisions to be accorded to the Fairport, Painesville & Eastern Railroad Company out of joint interstate rates to and from Alkali, Ohio, prescribed for the future and adjustment required from March 25, 1920. Previous report 53 I. C. C., 549.

*Frank Van Slyck, John S. Burdmore, Luther M. Walter, and W. W. Collin, jr., for Fairport, Painesville & Eastern Railroad Company.*

*D. P. Connell for defendants other than Fairport, Painesville & Eastern Railroad Company.*

*Royal T. McKenna for Director General.*

REPORT OF THE COMMISSION ON FURTHER HEARING.

CLARK, *Chairman*:

Exceptions were filed by the defendants to the proposed report by the examiner, and the case was argued orally before us.

The question is as to divisions to be received by the Fairport, Painesville & Eastern Railroad, hereinafter termed petitioner, from its trunk line connections out of joint rates on traffic between Alkali, Ohio, and points in other states.

By the original complaint herein the Diamond Alkali Company, hereinafter called the Alkali company, having a plant on the line of the petitioner at Alkali, attacked all rates to and from its plant. Complainant's plant is the principal industry served by petitioner and is owned by substantially the same interests. The road extends

from Painesville to Fairport, Ohio, 4.5 miles, connecting at Painesville with the New York Central Railroad, and at Fairport with the Baltimore & Ohio Railroad, hereinafter referred to as the trunk lines. Alkali is about 3 miles from Painesville and about 1.5 miles from Fairport. Through traffic of the Alkali company is received from, or delivered to, the petitioner at the junctions named. The rates formerly charged were the combinations on these junctions. In our previous report herein, dated June 27, 1919, 53 I. C. C., 549, we found that petitioner was a common carrier and that the rates on shipments between the Alkali company's plant and points in other states were, and for the future would be, unreasonable and unduly prejudicial to the extent that they exceeded the joint rates contemporaneously applicable between Painesville or Fairport and such points. Reparation was awarded. In that report we said:

It is contended on behalf of the Fairport, Painesville & Eastern that the local rates of that road applied on the shipments in question were and are just and reasonable; that its divisions of the joint rates should not be less than its local rates; and that the connecting trunk lines should be required to bear the whole amount of reparation awarded. On that basis its divisions would largely exceed in many, if not all, instances the switching charges absorbed by the trunk lines on similar traffic. Clearly an excessive allowance or division would constitute a rebate to the controlling industry. What would be a fair and reasonable division is not in issue and can not be decided upon the present record. If defendants are unable to agree upon divisions, they may, by appropriate proceeding, secure determination of the matter by the Commission. To the extent, if any, that the charges collected by the Fairport, Painesville & Eastern exceeded those that would have accrued to it on the basis of fair and reasonable divisions of the joint rates it will be required to join in the payment of reparation.

Joint rates in conformity with this decision were made effective from and to Alkali October 1, 1919. The trunk lines were then under federal control and negotiations between petitioner and officials of the Railroad Administration were entered upon in an endeavor to reach an agreement as to the divisions of rates to be accorded to it. A division of \$1.76 per car was offered to petitioner and refused. Shortly after federal control the matter was taken up by petitioner with officials of the trunk lines, but no agreement was reached. Petitioner now seeks on further hearing a determination by us of divisions for the past and future.

Petitioner contends, as originally, that it should receive as its divisions amounts equal, at least, to its local rates, which vary on the different commodities, but which on the more important movements yield about \$4 per car. The trunk lines maintain that in no case should the division allowed petitioner exceed \$1.56 per car. Neither of these figures takes into account the 40 per cent increase in 1920.

The plant of the Alkali company covers an area about one-third of a mile long and one-fourth of a mile wide, and about 97 per cent

of the traffic handled by petitioner is furnished by it. Seven tracks enter the plant from the east and 20 tracks from the west, the tracks within the inclosure, which almost surrounds the plant, being owned by the Alkali company. Three of these tracks, two of which are elevated, run entirely through the plant property and may be reached from either end. All the tracks, except the two which are elevated, are used for loading or unloading various commodities or for storing cars.

Freight traffic is interchanged with the trunk lines on petitioner's tracks adjoining the right of way of the trunk lines. The plant is 1.03 and 2.63 miles, respectively, from the points of interchange with the Baltimore & Ohio and the New York Central. Petitioner's operating department keeps in communication with the agents of the trunk lines, and, when informed that cars have been put on the interchange tracks, arranges trips accordingly. Cars intended for the Alkali company, as well as occasional cars for other consignees, are hauled by petitioner from the interchange tracks to Alkali, which is immediately west of the western entrance to the plant, and are placed on storage or hold tracks, where they are classified and then spotted. Sometimes cars are temporarily held on these storage tracks until placement orders are received from the industry. At times, when traffic is heavy, coal brought from the point of interchange with the New York Central is spotted within the plant in one movement. In handling outbound traffic these movements are reversed. All cars, both inbound and outbound, are weighed on a scale located between Alkali station and the western entrance to the plant. In some instances inbound cars are weighed when being moved from the storage tracks to the point of final placement within the plant, while in others they are weighed and taken to the storage yard to await orders for final disposition.

The parties agree that the principles outlined in *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408, should govern the divisions to be received by petitioner and that petitioner is entitled to no more than an amount sufficient to pay the operating expenses, taxes, and a fair return on the investment, properly chargeable to interchange traffic. No records are kept by petitioner showing the engine-hours devoted to the different classes of traffic but a three-day test was jointly made by representatives of petitioner and of the trunk lines in January, 1920. A representative of each road accompanied the engines of petitioner and recorded all engine movements and the time consumed. As a result of study of data so obtained petitioner found that 54 per cent of the engine time should be chargeable to interchange, whereas the trunk lines' representative



found only 29.7 per cent to be so chargeable. Petitioner also conducted a 13-day test in April and a 15-day test in June of the same year. Trunk line representatives were present during three days of the latter test. As a result of the three studies petitioner found 57 per cent of the engine-hours properly chargeable to interchange traffic, while the trunk lines for the three-day period of the June test found 23.9 per cent to be so chargeable. The wide difference in the amount of the divisions contended for by petitioner and that urged by the trunk lines as proper is primarily due to these differences in percentage, which, in turn, are due to the different theories upon which the allocation was made. Petitioner made its time distribution on the theory that the line-haul rates included all service incident to the movement of the cars to and from points of loading and unloading in complainant's plant, whereas the trunk lines' representatives made their allocation on the theory that all that was required under the transportation rate was one reasonable single-movement placement which, it is urged, is accomplished when the cars are placed in the storage yard just outside the western entrance of the plant. The time charged by them to the interchange service does not therefore include spotting of the cars. Conversely, on outbound traffic it includes only the time consumed in handling the cars from the storage yard to the point of interchange. Time consumed in weighing outbound cars was charged by both petitioner and the trunk lines to interchange traffic. All other weighing was charged to the industry. Idle time was distributed equally between interchange and plant traffic by petitioner, while the trunk lines apportioned it according to the number of engine-hours assigned to each class of work. The theory of the trunk lines' representatives as to one single-movement placement is apparently based on the assertion that the spotting must be done at the convenience of the plant and subject to such interferences as may arise within the plant. Cars are sometimes held at the storage yards until placement orders are received and occasionally when cars are being spotted the engine doing that work is delayed by other engines belonging to petitioner which are switching cars within the plant. These considerations, of course, affect the efficiency of handling the traffic and to the extent that they increase operating expenses will be considered in arriving at a proper basis of divisions. The tracks within the plant are safe and practicable for standard power and equipment and the spotting service is not complex. Upon consideration of all the facts we are of opinion that the receipt and delivery of cars at the customary places for loading and unloading within the plant is a service which is covered by the line-haul rates. It should be understood, however, that the line-haul rate covers only one placement of the car for loading or unloading.

Cost statements were submitted by petitioner from which, by the use of the percentage contended by it to be chargeable to interchange traffic, it obtains approximately \$4 per car as the division necessary to cover cost of service and a reasonable return on investment. They cover only that portion of the joint transportation which is performed by petitioner and do not take into account the relation between the joint rates to be divided and the cost of the entire service covered thereby. In *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, 61 I. C. C., 272, 279, in considering a cost statement submitted in a matter of divisions, we said:

Cost of service is but one of the factors taken into consideration in the making of freight rates, and the wide variations in rates make it probable that many of them fail to cover all the factors of operating expense that a careful cost study might allocate against the service.

The petition herein was filed on March 24, 1920, subsequent to the taking effect of the amendments to the interstate commerce act made by the transportation act, 1920. Under the provisions of paragraph 6, section 15, of the amended act we can require adjustment of divisions only for the period subsequent to the filing of the petition. *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, *supra*. We find that between March 25, 1920, and August 25, 1920, both inclusive, the Fairport, Painesville & Eastern Railroad Company was entitled to \$2.50 per car as its just, reasonable, and equitable division of the joint rates applying on all carload traffic transported between Alkali, Ohio, and points in other states interchanged by it with the New York Central Railroad Company and the Baltimore & Ohio Railroad Company; and that on and after August 26, 1920, it was, and for the future will be, entitled to a division of \$3.50 per car on such traffic.

An appropriate order will be entered.

No. 11522.

SWIFT & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

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*Submitted February 18, 1921. Decided May 27, 1921.*

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Rates on hogs, in carloads, from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., to North Fort Worth, Tex., found unreasonable. Reparation awarded and reasonable rates for the future prescribed.

*R. D. Rynder* for complainant.

*F. E. Andrews, C. S. Burg, H. W. Davis, and A. B. Enoch* for defendants.

*Alexander M. Bull* for Director General.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

CLARK, *Chairman*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by the parties.

Complainant asks the establishment of reasonable rates for the future and reparation on numerous shipments of hogs, in carloads, moving on and after June 25, 1918, from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., to North Fort Worth, Tex. By complaint seasonably filed it is alleged that the rates charged were unjust and unreasonable to the extent that they exceeded the scale of rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, for similar short-line distances, increased pursuant to general order No. 28 of the Director General of Railroads, and as authorized in *Increased rates, 1920*, 58 I. C. C., 220. Complainant does not, however, insist upon the application of that scale to this traffic, but instead suggests its use as a convenient means by which to measure the unreasonableness of the rates charged.

Unless otherwise indicated, rates hereinafter referred to are those in effect prior to *Increased Rates, 1920*, *supra*, and are stated in cents

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per 100 pounds. It is admitted by counsel for complainant that if the rates north of Kansas City were continued and the factor south thereof were found unreasonable, the complaint would be satisfied. As a practical matter, therefore, the issues are confined to the rates south of Kansas City.

The shipments from South Omaha moved in single-deck cars from December 6, 1918, to January 4, 1919, over either the Chicago, Rock Island & Pacific or over the Chicago, Burlington & Quincy and the Missouri, Kansas & Texas; the shipments from Sioux City moved in double-deck cars from December 10, 1918, to January 18, 1919, over the Chicago & North Western, the Chicago, Burlington & Quincy, and the Missouri, Kansas & Texas; and the shipments from South St. Paul moved in single-deck cars from December 11, 1918, to January 15, 1919, over the Chicago, Rock Island & Pacific. Apparently no shipments were made from South St. Joseph.

The rate beyond Kansas City for both single-deck and double-deck carloads was 48 cents, increased from 41 cents on June 25, 1918, pursuant to general order No. 28, which required increases in rates on live stock of 25 per cent, subject to a maximum increase of 7 cents. The minimum weights in connection with the rates south of Kansas City were 17,000 pounds for single-deck cars and 24,000 pounds for double-deck cars. A joint rate of 57.25 cents was charged from South Omaha, made by adding an arbitrary of 9.25 cents to the rate of 48 cents beyond Kansas City. Combination rates of 73 cents and 63 cents were charged from South St. Paul and Sioux City, respectively, computed by adding the maximum increase of 7 cents authorized by general order No. 28 to the combination of 25 cents and 15 cents to Kansas City and 41 cents beyond in force on June 24, 1918.

The distance from Kansas City to North Fort Worth is 506 miles, and for that distance the scale referred to, increased by the maximum of 7 cents under general order No. 28, would produce rates of 40 cents for double-deck cars and 45 cents for single-deck cars. The reductions requested are 8 cents and 3 cents, according to the kind of car used.

It is contended for defendants that these movements of hogs were unusual and irregular and that reparation is the main object of the complaint. In this and other similar cases complainants have attacked existing rates only where the application of the scale referred to would produce reductions.

Defendants introduced exhibits to show that the earnings per car on live stock were and are considerably less than the earnings received on ordinary freight. Similar comparisons were submitted

in *Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co.*, 47 I. C. C., 287, 304, in which we said:

As to the volume of the movement of the other commodities, as to whether they ever move in trainloads, the record is silent. It follows that the bare comparisons may be equally demonstrative, at least theoretically, of the comparatively high level of the rates on the other commodities as of the comparatively low level of the rates on live stock. See *Louisville & N. R. Co. v. United States*, 238 U. S., 1, 11-12.

It is shown that the rates assailed were increased the maximum of 7 cents permitted by general order No. 28, representing an increase of 17 per cent, whereas rates on other commodities were generally increased 25 per cent under that order. It is asserted that the increases were not sufficient to pay the increased cost of operation during the period of federal control.

The scale for live stock upon which complainant relies was prescribed December 11, 1911, for application from numerous points in the southwest to Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., where extensive packing houses were located. The rates prescribed for cattle, in carloads, were the same as those prescribed for hogs, sheep, or goats in double-deck carloads. In *Railroad Commission of Louisiana v. A. H. T. Ry. Co.* 41 I. C. C., 83, 96, 111; we had this scale before us, but prescribed a slightly different scale for application on beef cattle between Shreveport and points in Texas. In *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I. C. C., 283, 292, decided January 22, 1918, we prescribed the so-called Shreveport scale, which was a modification of the scale last referred to.

On January 20, 1919, the Director General initiated a distance scale of rates on live stock based on the Shreveport scale increased pursuant to general order No. 28. This scale applies generally between points in Oklahoma, Louisiana, Texas, and Arkansas on both interstate and intrastate traffic, and extends northward as far as Wichita.

For the distance of 506 miles between Kansas City and North Fort Worth application of the scale initiated by the Director General produces rates on hogs in single-deck cars of 43.5 cents for single-line hauls and 45 cents for joint-line hauls and corresponding rates on hogs in double-deck cars of 38 cents and 39 cents, respectively.

In *Wilson & Co. v. Director General*, *infra*, page 171, we are asked to prescribe rates on hogs and cattle, in carloads, from Kansas City, Mo.-Kans., to Oklahoma City; in No. 11077, *Morris & Company v. Director General*, rates on hogs from Sioux Falls, S. Dak., to Oklahoma City are attacked; and in No. 11589, *Morris & Company v. Director General*, rates on hogs from Kansas

City, Mo.-Kans., and St. Joseph, Mo., to Oklahoma City are assailed. In those cases, as in the instant case, reparation is asked on basis of the scale prescribed for application between points in the southwest, and we are asked to extend the application of that scale to the north as far as Kansas City and St. Joseph.

The scale initiated by the Director General has been given general application throughout the southwest, without regard to the volume of movement between particular points. Operating conditions in that territory are not more favorable than in the territory as far north as Kansas City and South St. Joseph.

South St. Joseph and Kansas City have been and are grouped as points of origin to Oklahoma destinations and to various destinations in Texas. The rates on cattle and hogs to Kansas City and South St. Joseph are the same from points where packing houses are located, and from various territories these two cities are grouped as common markets. The rates on cattle and hogs are the same from both points to Chicago, Ill. The evidence points to the conclusion that equal rates on cattle and hogs from Kansas City and South St. Joseph should be maintained.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that the rates from South St. Joseph and Kansas City to North Fort Worth exceeded, exceed, or may exceed rates on hogs in single-deck cars of 43.5 cents for single-line hauls and 45 cents for joint-line hauls, and on hogs in double-deck cars of 38 cents for single-line hauls and 39 cents for joint-line hauls, subject on and after August 26, 1920, to the increases authorized in *Increased Rates, 1920, supra*, and to the following minimum weights which are those now applicable on hogs in connection with the scale initiated by the Director General:

Length of cars.	Hogs in single-deck cars.	Hogs in double-deck cars.
	Pounds.	Pounds.
26 feet 7 inches and less.....	17,000	23,000
Over 26 feet 7 inches to and including 38 feet.....	19,000	24,500
Over 38 feet to and including 40 feet.....	19,000	24,500
Over 40 feet to and including 41 feet.....	19,475	25,113
Over 41 feet to and including 42 feet.....	19,950	25,725
Over 42 feet to and including 43 feet.....	20,425	26,338
Over 43 feet to and including 44 feet.....	20,900	26,950
Over 44 feet.....	(1)	(1)

<sup>1</sup> For each foot or fraction of a foot in excess of 44 feet in length add the following to the minimum weight provided for cars 44 feet long:

On hogs in double-deck cars..... 612.5 pounds.

On hogs in single-deck cars..... 475 pounds.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have

accrued at the rates and minimum weights herein found reasonable; and that complainant is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

DANIELS, *Commissioner*, concurring in part:

I agree that the scale herein proposed will for the future be a reasonable scale for the territory covered, and desirable in the interest of rate uniformity. That on a sporadic movement, the exaction of a rate increased less than 25 per cent injured and damaged complainant, and entitles it to reparation in money damages, is, I think, not established.

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No. 11240.<sup>1</sup>

WILSON &amp; COMPANY, INCORPORATED, OF OKLAHOMA.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted January 14, 1921. Decided May 27, 1921.*

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Rates on beef cattle and hogs, in carloads, from Kansas City, Mo.-Kans., and on hogs in carloads from Sioux Falls, S. Dak., to Oklahoma City, Okla., found unreasonable. Reasonable rates prescribed and reparation awarded.

*John S. Burchmore* and *Luther M. Walter* for complainants and interveners.

*F. E. Andrews*, *A. B. Enoch*, and *T. J. Norton* for defendants.

*Alex. M. Bull* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

## By DIVISION 2:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued. We have reached conclusions differing somewhat from those suggested in the proposed report.

Complainants and interveners, hereinafter referred to as complainants, are corporations engaged in the packing-house business at Oklahoma City, Okla. They allege (1) that the rates on hogs, in carloads, from Sioux Falls, S. Dak., to Oklahoma City are unreasonable, and (2) that the rates on cattle and hogs, in carloads, from Kansas City, Mo.-Kans., to Oklahoma City are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated herein in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments of hogs from Sioux Falls moved between June 25, 1918, and July 30, 1919, as routed, over the Chicago, Milwaukee & St. Paul to Sioux City, Iowa; Chicago & North Western to Council Bluffs, Iowa; Chicago, Burlington & Quincy to Kansas City; and the

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<sup>1</sup> This report also embraces No. 11077, *Morris & Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.*



Atchison, Topeka & Santa Fe to destination, 745 miles. The short-line distance is 724 miles by way of the Missouri, Kansas & Texas beyond Kansas City. A combination rate of 67.5 cents was charged, apparently made by adding the maximum increase permitted by general order No. 28 of the Director General of Railroads to the combination rate in effect on June 24, 1918, composed of a rate of 22 cents to Kansas City and 38.25 cents beyond. The rate by way of the Chicago, Rock Island & Pacific, 872 miles, was 63 cents. On July 30, 1919, the 63-cent rate was established over the route of movement and on December 31, 1919, by way of the Missouri, Kansas & Texas beyond Kansas City.

The shipments from Kansas City moved subsequent to January 1, 1918. The applicable rates on cattle, minimum 22,000 pounds, were 28 cents prior to June 25, 1918, and 35 cents thereafter. The rates on hogs, minimum 17,000 pounds in single-deck carloads and 34,000 pounds in double-deck carloads, were 38.25 cents prior to June 25 and 45.5 cents thereafter. The rate of 38.25 cents was based upon a rate of 19.5 cents to Wichita, Kans., and an arbitrary of 18.75 cents beyond. The rate on hogs in double-deck carloads, minimum 22,000 pounds beyond Wichita, was 16.75 cents. The through rate on hogs in double-deck cars, therefore, exceeded the aggregate of the intermediate rates. The rates after June 25 were also in violation of the fourth section.

Complainants seek the establishment of rates based upon the short-line distances and the scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, increased pursuant to general order No. 28 of the Director General of Railroads. We are asked to award reparation based on the following rates from Kansas City: 25 cents prior to June 25 and 31.5 cents thereafter on hogs in double-deck carloads and cattle in carloads, minimum 22,000 pounds; 28.75 cents prior to June 25 and 36 cents thereafter on hogs in single-deck carloads, minimum 17,000 pounds. The rates sought on hogs from Sioux Falls, subsequent to June 25, are 54 cents in single-deck carloads and 48 cents in double-deck carloads.

It is asserted that the shipments from Sioux Falls moved either in trainloads or multiple lots; and the rates charged thereon are compared with those applicable from Chicago, Ill., St. Paul, Minn., and South Omaha, Nebr., to Oklahoma City. Defendants contend, however, that the shipments referred to constituted a special and exceptional movement, no similar shipments having moved either before or after the reparation period.

Complainants compete with packers at St. Joseph, Mo., Kansas City and Wichita, Kans., and Fort Worth and Dallas, Tex. The

rate from Kansas City to Fort Worth on hogs, minimum 17,000 pounds in single-deck carloads and, except as hereinafter indicated, 25,000 pounds in double-deck carloads, was 41 cents prior to June 25 and 48 cents thereafter. A minimum of 34,000 pounds on hogs in double-deck carloads was maintained by the Atchison, Topeka & Santa Fe. The rate of 48 cents was extended to Dallas, 517 miles. The distance to Fort Worth is about 48 per cent greater than to Oklahoma City, but the rate to Fort Worth was only about 8 per cent greater. Generally speaking, the minimum weights also favored the latter city. The situation is substantially the same with respect to shipments from St. Joseph. The allegation of undue prejudice is based primarily upon the relationship in rates on hogs between Oklahoma City and the Fort Worth-Dallas group. The record, however, is inadequate to determine the exact relationship which should exist between these cities.

The transportation of live stock requires expedited service and the maintenance of loading and unloading facilities not required for the transportation of ordinary freight. Defendants compare the earnings per car on live stock with earnings received on ordinary freight, but as stated in *Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co.*, 47 I. C. C., 287, 304,—

the bare comparisons may be equally demonstrative, at least theoretically, of the comparatively high level of the rates on the other commodities as of the comparatively low level of the rates on live stock.

It is also shown that the rates assailed were increased the maximum of 7 cents permitted by general order No. 28, representing an increase of 17 per cent, whereas the rates on other commodities were generally increased 25 per cent under that order.

The scale which complainants seek to have applied and the subsequent modifications thereof, including the distance rates initiated by the Director General on January 20, 1919, are described in *Swift & Co. v. Director General*, 62 I. C. C., 166, where we extended the application of the scale initiated by the Director General to traffic from Kansas City and South St. Joseph to North Fort Worth. The latter scale now applies generally throughout the southwest to both interstate and intrastate traffic and the operating conditions in that territory are not more favorable than in the territory as far north as Kansas City and St. Joseph.

For the short-line distance of 343 miles from Kansas City to Oklahoma City, the application of the scale initiated by the Director General produces rates on hogs, in double-deck carloads, and beef cattle, in carloads, of 32 cents for single-line hauls and 35 cents for joint-line hauls, and corresponding rates on hogs, in single-deck carloads, of 37 cents and 40.5 cents, respectively.

We find that the rates assailed from Kansas City were and are unreasonable to the extent that the rates on hogs, in double-deck carloads, and on beef cattle, in carloads, exceeded or exceed 25.5 cents prior to June 25 and 32 cents thereafter for single-line hauls, and 28 cents and 35 cents, respectively, for joint-line hauls; and to the extent that the rates on hogs, in single-deck carloads, exceeded or exceed 30 cents prior to June 25 and 37 cents thereafter for single-line hauls, and 33.5 cents and 40.5 cents, respectively, for joint-line hauls; and that the rates assailed from Sioux Falls were and are unreasonable to the extent that they exceeded or exceed rates on hogs in single-deck carloads of 59 cents for single-line hauls and 62.5 cents for joint-line hauls, and on hogs in double-deck carloads of 54.5 cents for single-line hauls and 57 cents for joint-line hauls, all of the rates found reasonable to be subject on and after August 26, 1920, to the increases authorized in *Increased Rates, 1920, supra*, and to the following minimum weights, which are those now applicable in connection with the scale initiated by the Director General:

For cars of length—	Hogs (single-deck).	Hogs (double-deck).	Beef cattle.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>
36 feet 7 inches and less.....	17,000	23,000	22,000
Over 36 feet 7 inches to and including 38 feet.....	18,000	24,500	24,500
Over 38 feet to and including 40 feet.....	19,000	24,500	24,500
Over 40 feet to and including 41 feet.....	19,475	25,113	25,000
Over 41 feet to and including 42 feet.....	19,950	25,725	25,000
Over 42 feet to and including 43 feet.....	20,425	26,338	25,338
Over 43 feet to and including 44 feet.....	20,900	26,950	26,950
Over 44 feet (see note) .....			

NOTE.—For each foot or fraction of a foot in excess of 44 feet in length add the following to the minimum weight provided for cars 44 feet long:

On beef cattle; also hogs in double-deck cars..... 612.5 pounds.  
On hogs in single-deck cars..... 475 pounds

We further find that complainants and intervener made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rates and minimum weights herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

DANIELS, *Commissioner*, concurring in part:

I agree that the scale herein proposed will for the future be a reasonable scale for the territory covered, and desirable in the interest of rate uniformity. That on a sporadic movement, the exaction of a rate increased less than 25 per cent injured and damaged complainants, and entitles them to reparation is, I think, not established.

No. 11555.

## CHEVROLET MOTOR COMPANY OF CALIFORNIA

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA  
& SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted February 21, 1921. Decided May 27, 1921.*

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Rates charged on automobile floor, toe, and running boards, in carloads, from Detroit, Mich., to Melrose, Calif., found to have been and to be unreasonable. Reasonable maximum basis of rates on untrimmed boards prescribed for the future and reparation awarded.

*John Thomas Smith, Frank A. Gaynor, and C. R. Scharff* for complainant.

*John F. Finerty* for Director General.

*Robert W. Fyfe* for other defendants.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

## BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the manufacture and sale of automobiles at Oakland, Calif. By complaint seasonably filed it alleges that the rates charged by defendants on 26 shipments of automobile floor, toe, and running boards, wooden, trimmed and untrimmed, in carloads, which moved subsequent to October 10, 1917, from Detroit, Mich., to Melrose, Calif., were unlawful and unreasonable. We are asked to award reparation and to prescribe reasonable rates for the future. Rates are stated herein in amounts per 100 pounds, and do not include the general increases authorized by us on July 29, 1920.

Melrose is within the switching limits of Oakland and takes the same rates. The shipments moved over defendants' lines and charges were collected at the fourth-class rates, governed by the western classification, and the class-A rate, governed by the consolidated classification, on shipments moving prior and subsequent to December 30, 1919, respectively. Prior to June 25, 1918, the fourth-class and class-A rates from Detroit to Oakland were \$2.15 and \$1.82, respectively. On that date they were increased to \$2.69 and \$2.275, respectively, pursuant to general order No. 28 of the Director General of Railroads.

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The shape, size, and basic construction of the trimmed and untrimmed boards shipped by complainant are the same. The trimmed boards are painted or dipped, the top surfaces covered with linoleum, and the edges bound with aluminum strapping. All the boards are made of three-fourth-inch dressed lumber. The floor board is 19 inches wide and 30 inches long, the toe boards 12.5 inches wide and 28 inches long, and the running board 9.5 inches wide and 50.5 inches long. All the boards are shaped and bored for the reception of various attachments and fittings. The values of the trimmed floor, toe, and running boards described are, respectively, \$1.35, 82.6 cents, and \$1.01; of the untrimmed boards, 49, 35, and 49 cents, respectively. The boards used in complainant's larger model automobiles are of the same general contour, but exceed slightly the dimensions above stated and are valued relatively higher. Prior to November 30, 1919, complainant shipped only the trimmed boards; since then it has shipped the untrimmed boards only.

Until December 30, 1919, there was no specific rating or rate on these three kinds of boards in mixed carloads. Running boards were rated fourth class, minimum 30,000 pounds, effective April 20, 1917, in western classification, and by analogy this rating was applied to floor and toe boards. Effective April 1, 1918, floor boards were rated class A, minimum 30,000 pounds, but as all the shipments moved in mixed carloads, the fourth-class rates were applied under the classification rule which provided that mixed-carload shipments would be subject to the highest rate and minimum applicable on any article in the carload. On December 30, 1919, the present class-A rating on these articles, minimum 36,000 pounds, became effective in the consolidated classification.

Complainant does not attack the class-A rating on finished or trimmed boards, but contends that the fourth-class rates charged on shipments of trimmed boards which moved prior to November 30, 1919, were unreasonable to the extent that they exceeded the contemporaneous class-A rates, and that the class-A rate charged on shipments of untrimmed boards which moved subsequent to that date was unreasonable to the extent that it exceeded a rate of 85 cents, minimum 60,000 pounds, contemporaneously applicable on lumber. Reparation is sought accordingly.

For complainant it is stated that the class-A rating on running boards was established by defendants upon its representations that running boards are analogous to floor and toe boards and that shipments of these boards would continue to be made in mixed carloads. The class-A rating on floor boards has been in effect since April 1, 1918. Prior to the establishment of the class-A rating on boards, valuable metal parts of machinery were rated class A. Complainant

infers that the establishment of the class-A rating on all these boards effective December 30, 1919, constituted an admission by defendants that the former fourth-class rating on some of the boards was erroneous.

Complainant contends that the untrimmed boards are merely pieces of lumber, surfaced and cut to size; that their value is no higher than that of other lumber; that the risk of loss or damage in transit is no greater; and that they should be rated as lumber, citing *Rates on Lumber and Lumber Products*, 52 I. C. C., 598. The untrimmed boards now move from St. Louis to complainant's assembling plant at Tarrytown, N. Y., at fifth class; from St. Louis to its plant at Flint, Mich., at lumber rates; and from the same points of origin to its plant at Fort Worth, Tex., at a rate of 62.5 cents, which is less than the class-A rate. Complainant submitted an exhibit showing lumber products, including dimension stock, bed slats, flooring, wooden pump tubing, and shapes sawed in the rough for wagons, which move at lumber rates from various producing points to numerous destinations throughout the country.

Defendants explain that the fourth-class rating was established in furtherance of a plan to group all similar parts, such as fenders and mud guards, in one item, to which complainant made no objection at that time; and contend that the application of the fourth-class rating and rates was not unreasonable, and that the voluntary reduction to class A should not be construed as an admission that the former rates were unreasonable. They oppose extending lumber rates to untrimmed boards on the ground that the latter are manufactured articles and should be rated higher than rough material.

It was testified for defendants that examination of the boards used in other and more expensive makes of cars had disclosed that in some instances they were more highly fabricated than those shipped by complainant. Defendants contend that this fact should be considered, and that ratings can not be made to fit the traffic of a single concern. Defendants' witness stated, however, that a distinction should be made between the trimmed and the untrimmed boards; and that the present intention of the classification committee is to provide different ratings for the two kinds of boards. They assert that the class-B rating, minimum 36,000 pounds, is usually applied on rough wooden articles in carloads and cite various commodities which are thus rated, among others, wooden agricultural implement parts in the rough, vehicle poles in the white, built-up wood, furniture stock in the rough, and grain doors. Prior to June 25, 1918, when it was increased to \$1.815 pursuant to general order No. 28, the class-B rate from Detroit to Oakland was \$1.45,

The record does not establish that the fourth-class rate was unreasonable as applied to the shipments of trimmed boards which moved prior to April 1, 1918. On that date, as heretofore stated, the class-A rate was specifically made applicable on floor boards, which by analogy included toe boards. As the trimmed wooden running boards are of substantially the same material as floor boards and of lower value, the application of a higher rate and rating thereon was unreasonable.

There is a marked distinction, however, between the trimmed and untrimmed boards. The trimmed board is a finished product which is more valuable than the untrimmed. The untrimmed board is in the white and is not salable or usable in that condition. In *Rates on Lumber and Lumber Products, supra*, we recommended that certain relationships between the rates on rough lumber and various manufactured articles be established, with a view to removing undue prejudices as between commodities and localities. While this record does not warrant a finding that lumber rates or arbitraries higher should be established on untrimmed boards, the rate reasonably should be lower than that applied on the trimmed and finished products.

We find that the fourth-class rates, minimum 30,000 pounds, charged on the shipments of trimmed boards moving subsequent to April 1, 1918, were unreasonable to the extent that they exceeded the contemporaneous class-A rates and minimum; that the fourth-class rates, minimum 30,000 pounds, charged on shipments of untrimmed boards moving prior to December 30, 1919, were unreasonable to the extent that they exceeded the contemporaneous class-B rates, minimum 30,000 pounds; that the applicable class-A rates, minimum 36,000 pounds, charged on shipments of untrimmed boards moving subsequent to December 30, 1919, were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed the class-B rates, minimum 36,000 pounds, contemporaneously in effect. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

No. 11565.<sup>1</sup>  
PROVIDENCE FRUIT & PRODUCE EXCHANGE ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted January 10, 1921. Decided June 11, 1921.*

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Rates on bananas, in carloads, from New York harbor lighterage points, N. Y., to Providence, R. I., and Worcester, Mass., found not unreasonable or otherwise unlawful. Complaints dismissed.

*G. W. Collier* for complainants.

*John F. Finerty* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants in No. 11565 and Sub-No. 1 are engaged in the fruit and produce business at Providence, R. I., and Worcester, Mass., respectively. By complaints filed June 22, 1920, as amended, they allege that the rates charged on bananas, in carloads, from New York harbor lighterage points, N. Y., hereinafter called lighterage points, and Harlem River, N. Y., to Providence and Worcester, during the period from June 25, 1918, to October 9, 1919, inclusive, were unreasonable, and in violation of the long-and-short-haul provision of the fourth section. We are asked to award reparation only. Rates will be stated in cents per 100 pounds.

The shipments were loaded from ship side into cars within the lighterage limits, moved by car-floats of the New York, New Haven & Hartford, hereinafter called the New Haven, to its terminal at Harlem River, and thence by rail to destinations. They were charged the applicable rates of 43 cents to Providence and 42.5 cents to Worcester.

This traffic moved under third-class rates. Prior to June 25, 1918, the specific rates to Providence and Worcester from Harlem

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<sup>1</sup> This report also embraces No. 11565 (Sub-No. 1), *W. H. Blodgett & Company v. Same*.  
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River were 25.5 and 29 cents, and from lighterage points 29 and 31 cents, respectively. Following *Proposed Increases in New England*, 49 I. C. C., 421, defendant published a tariff to become effective June 25, 1918, which named rates from Harlem River of 31.5 cents to Providence and 31 cents to Worcester and provided that from lighterage points carload shipments would be charged 3 cents additional, resulting in rates of 34.5 and 34 cents, respectively. A supplement effective on the same date increased those rates 25 per cent under authority of defendant's general order No. 28, so that on June 25, 1918, the rates from Harlem River became 39.5 cents to Providence and 39 cents to Worcester; from lighterage points, 43 and 42.5 cents, respectively. The rates thus increased were in effect when the shipments moved. Effective October 10, 1919, a maximum third-class rate of 39.5 cents was established from lighterage points. Complainants seek reparation to that basis.

Complainants' evidence is, in substance, that the contemporaneous third-class rate from Philadelphia, Pa., and Newark, N. J., more distant points, to Providence and Worcester via the Pennsylvania in connection with the New Haven at Harlem River was 39.5 cents. Through shipments from Philadelphia and Newark move over the Pennsylvania to Greenville, N. J., thence by New Haven car float to Harlem River direct, or by way of Bay Ridge, Brooklyn, N. Y., and the New York Connecting Railroad to Harlem River, and the New Haven beyond. The shipments originated at points in New York harbor, which are not directly intermediate in the through route from Philadelphia or Newark to Providence and Worcester. The arbitraries over the rates from Harlem River applied for the additional movement from these outlying points to Harlem River, and complainants do not directly attack the arbitraries as unreasonable. The fourth section departures, if any, were appropriately protected.

We find that the rates assailed were not unreasonable or otherwise unlawful.

The complaints will be dismissed.

No. 10888.

CHARLES E. SCHLICHER ET AL.

v.

DIRECTOR GENERAL AND NEW YORK CENTRAL  
RAILROAD COMPANY.

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*Submitted October 16, 1920. Decided June 10, 1921.*

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Defendant's refusal to establish a siding and switch connection at complainants' coal mine near Spangler, Pa., found not unduly prejudicial or otherwise unlawful. Complaint dismissed.

*John H. McCann and A. M. Liveright for complainants.*

*Parker McCollester and John S. Fisher for defendant.*

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

Complainants, the three members of a copartnership known as the Aldine Coal Company, seek reparation in the sum of \$50,000 for alleged loss of profits in the operation and sale of their coal mine located near Spangler, Pa. They allege that the failure and refusal of the New York Central Railroad Company, hereinafter referred to as the defendant, to establish a siding and switch connection at complainants' mine was unjust and unreasonable. They further allege that defendant, in violation of section 3 of the act to regulate commerce, unduly and unlawfully preferred and advantaged Ellis L. Orvis and the Manufacturers Coal Company, to whom complainants thereafter sold their mine. They also allege that defendant subjected complainants and their prospective coal traffic to undue prejudice and disadvantage. Complainants are also prosecuting their claim, involving the same statement of facts, and for the same amount of damages, before the Public Service Commission of the State of Pennsylvania. The evidence in that proceeding has been incorporated in this record. It appears from the statement of counsel for the complainants, made in connection with the offer of the testimony before the Pennsylvania commission in this case, that the proceeding before that tribunal is exactly the same as that now before us.

In January, 1917, complainants leased a tract of 116 acres of land for the purpose of mining a 56-inch seam of high-grade coal underlying approximately 25 acres of the tract. The tract is adjacent to defendant's right of way over which a main line of its railroad passes. The most practicable method of profitably operating the mine was by a siding and switch connection, although complainants conducted it as a wagon operation when the price of coal warranted. On January 23, 1917, complainants applied to defendant for a main-line siding large enough to accommodate six cars, to be located on defendant's right of way. The tipple which complainants planned to erect would have encroached upon the right of way. Complainants represented that there were at least 100,000 tons of coal to be mined, and that production would be at the rate of 75 to 100 tons per day.

In May, 1917, complainants advised defendant that a survey made by the complainants showed 112,500 tons, and later stated that developments indicated nearly double the amount originally estimated to be in the mine. They also pointed out that over 50,000 tons of "back coal," belonging to other interests, was recoverable only through this mine. In August, 1917, defendant sent to complainants a blank form of "Private Side Track Agreement (Track on Railroad Lands)," and asked whether the complainants would be willing to execute such an agreement to cover the proposed sidetrack. Complainants replied by returning to defendant the agreement properly executed, together with a certified check for \$479, to cover the complainants' share of the estimated cost of installing the siding and switch connection. According to the estimate submitted, defendant's share of the entire cost of construction amounted to \$571. Complainants were to bear the entire cost of the construction of the sidetrack proper and were to pay an annual rental of \$5 for the use of the right of way. Although complainants in this manner accepted the terms of the tendered agreement, defendant, on September 8, 1917, declined to install the siding "particularly at this time" on the ground of shortage of labor and material, the small amount of coal involved, and shortage of cars. As to the latter claim, it is shown that there was then a good supply of coal cars on defendant's line and that coal operators in this region were not hampered for want of cars.

In September, 1917, subsequent to the time defendant refused to install a siding, complainants were approached by Mr. Orvis, who expressed a desire to buy their mine and who said he believed he could get the siding. Complainants indicated their willingness to dispose of their holdings. Mr. Orvis then negotiated with the defendant, and represented that he was interested both in complain-

ants' mine and in 200,000 tons of "back coal" recoverable only through complainants' mine, and in several brick plants on defendant's line, which were urgently in need of coal. On October 3, 1917, after considering these additional arguments, defendant finally approved the application for the siding and connection. On October 12 or 13, 1917, complainants verbally gave Mr. Orvis a 30-day option to buy the lease and improvements for \$10,000. The option was exercised on October 26, 1917, on which date the property was transferred to the Manufacturers Coal Company, a corporation organized by Orvis to take over the property. On October 30, 1917, defendant contracted in writing with the Manufacturers Coal Company, to furnish a siding; and the siding and switch connection were subsequently established at the place and on the plans previously submitted by complainants. Defendant asserts that it had no knowledge that complainants had agreed to dispose of their interest in the mine until October 16, 1917. Complainants were never notified by the defendant of the approval and grant of the siding and insist that they would not have sold if they had received this information.

The allegation of undue prejudice will be first considered. The refusal of the siding and switch connection to complainants, coupled with the grant of the same to complainants' vendee, is specifically alleged in the complaint as the basis for the undue prejudice. The theory upon which this allegation is based is not clear. Undue prejudice, under section 3 of the interstate commerce act, ordinarily requires the prejudice suffered by one party to be a source of positive advantage to the one alleged to be preferred, and that a competitive relationship exists between the parties or commodities concerned. *City Ice & Supply Co. v. C. & N. W. Ry.*, 36 I. C. C., 514, 517. Here complainants had disposed of their property, were no longer in the coal-mining business, and therefore had no competitive relationship with the Manufacturers Coal Company at the time the sidetrack and switch connection were furnished by defendant. It should be stated that defendant asserts that when it approved the siding and switch connection on October 3, 1917, it did so under the belief that it was granting the connection to complainants. If defendant knew with whom it was dealing, as complainants contend, its conduct, while open to criticism, was not by reason of its action in subsequently providing the sidetrack in violation of section 3 of the act. Apparently Mr. Orvis was able to present the situation in such a light that he succeeded where complainants had failed.

At the hearing before the Public Service Commission of Pennsylvania, complainants attempted to show that the defendant, during  
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ing the period that complainants' application was pending, established sidings and switch connections for two other coal operators, adjacently located, under substantially similar circumstances. Upon objection by defendant to the sufficiency of the complaint to raise an issue of undue preference of such other operators, complainants' counsel voluntarily said that the testimony was not offered for the purpose of proving "discrimination" but for the purpose of showing the reasonable length of time in which such sidings could be installed. The following colloquy occurred between the chairman of the state commission and counsel for the complainants:

*Counsel for complainants:* It isn't offered for the purpose of discrimination.

*The Chairman:* Well, my mind is going no further than weighing this offer. Either you are proposing to show the discriminatory action of the railroad company in granting to another company, similarly engaged in business a short distance away, a siding, which would be discrimination, if it were anything, or, second, that you offer it for the purpose of showing the reasonable length of time in which the siding could be installed.

*Counsel for complainants:* The second purpose was what we offered it for.

*The Chairman:* Then you ought to show something of the physical conditions, what the circumstances and all were, something to make it comparable with the one here. If you did that, we would take it.

As so limited, the testimony was admitted. The record before the state commission, which embraces the testimony to which we are now referring, was offered before us *en bloc*, and, as stated, upon a statement by counsel for complainants that the nature of the two proceedings was exactly the same. Nevertheless, complainants' counsel on brief and at the oral argument urged that this practice resulted in undue prejudice to complainants and undue preference of such other operators. There were two hearings in this proceeding before our examiners. This issue was first presented in this record, after the taking of testimony on both sides had been concluded. The complaint herein purports to set out specifically the person or persons unduly preferred, and contains no allegation that such other operators were in any way favored. Complainants have never sought leave to amend their complaint to broaden the issue it originally stated, or to make the issue conform to the proof. While it is not our policy to be unduly technical in the matter of pleadings, rule III, paragraph (m), of the Rules of Practice provides that—

In case undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage, in violation of section 8, is alleged, the particular person, company, firm, corporation, locality, or description of traffic affected thereby, and the particular preference or advantage, or prejudice or disadvantage, relied upon as constituting such violation, should be clearly specified.

That rule is applicable generally to all proceedings before us. Here we are acting in a quasi-judicial capacity. *Mitchell Coal Co. v. Penna. R. R. Co.*, 230 U. S., 247; *Cattle Raisers' Asso. v. C., B. & Q. R. Co.*, 10 I. C. C., 88, 91. The basis for an award of damages by us must be as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, 49. That basis would be wholly lacking if we permitted the determination of this controversy to turn upon an issue of law raised, not in the pleadings, as required by our rules, but upon brief and argument; and if the fact was merely inferable from testimony received solely for another and a collateral purpose. Judicial bodies with unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the cause, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. *Bullard v. Smith*, 28 Mont., 387; *Fair Haven & W. R. Co. v. City of New Haven*, 77 Conn., 667; *Byrne v. Byrne*, 113 Cal., 294; *Henry v. Everts*, 29 Cal., 610; *Jones v. Read*, 1 La. Ann., 200; *Emory v. Owings*, 3 Md., 178. As is said in *Barasch v. Kramer*, 115 N. Y. Supp., 176, 181, "it is manifest any other rule would result in surprise and injustice." See also *Business Men's Asso. of Minn. v. C. & N. W. Ry. Co.*, 2 I. C. C., 73, 87-88. Defendant's objection at the argument that certain testimony should not be considered so far as the allegation of undue prejudice is concerned, must accordingly be sustained. *Stuarts Draft Milling Co. v. S. Ry. Co.*, 31 I. C. C., 623; *Reliance Mfg. Co. v. I. C. R. R. Co.*, 51 I. C. C., 607, 608; and *Dolan Fruit Co. v. C., B. & Q. R. R. Co.*, 43 I. C. C., 353, 356. Complainants have elected what issues they would raise for our determination; on those issues both complainants and defendant have been heard, and our decision should be based. Complainants have no right to expect us to award damages upon an issue which they have not attempted to raise in the manner prescribed by our liberal rules of procedure; and as to which defendant has not been apprized in the usual course.

But even if we could properly find for the complainants upon this particular issue, they must fail to secure an award of reparation for damages suffered as the result of any prejudice shown to exist, for want of proof of damages under the act.

Both the fact and the amount of damages must be proved to entitle the complainants to reparation. The selling price of \$10,000 appears to have been sufficient to cover the original capital invested and cost of operation until the mine was sold. Damages may not

properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not a proximate result of defendant's unlawful conduct.

Complainants rest their claim to reparation in part on alleged loss of profits on coal that would have been sold from May 14, to October 26, 1917, assuming a production at the rate of 75 tons per day for the first 15 working days and thereafter at 100 tons per day. The former date is taken as being a reasonable time for the completion of the siding. The record shows the cost of production per ton and the average selling price for each month or portion thereof. After deducting royalties and profits on coal sold by transporting it to cars in wagons, complainants estimated a net loss of profits in the amount of \$30,594.89. However, there are other factors which preclude us from accepting this estimate with confidence that it shows the amount of damage suffered by complainants. There was a deficiency of labor in the mines at that period, and as the season advanced the shortage became more and more acute. It is possible that shortage of labor would have curtailed production even if the siding and switch connection had been built promptly.

In determining the amount of damages we are restricted to shipments that would have moved in interstate commerce. The record is not convincing as to what proportion of the production of this mine would have gone into interstate channels if defendant had done all that complainants sought. The coal was a high-grade by-product coal for which there is a market within the state of Pennsylvania and elsewhere. It is reasonable to assume from the evidence that coal mined by complainants would have been shipped in part to points in the state of Pennsylvania and in part to points in the state of New York and other states, but in what proportions it is impossible to state from the record. The fact that complainants have brought the same proceedings before a state tribunal, seeking there the same amount of damages for the same wrong, suggests that they themselves appreciate the difficulty presented by this situation.

Coming to the allegation of a violation of section 1, complainants contend, first, that a sidetrack and switch connection are facilities of shipment included in the term "transportation" as defined in the interstate commerce act; and, second, that the failure of defendant to furnish complainants with such sidetrack and switch connection upon reasonable request therefor was in violation of section 1, which then required in part:

\* \* \* it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor.

Without deciding that the term "transportation" is broad enough to cover a siding and switch connection as contended by complainant, or, if broad enough, that it would be defendant's duty to furnish same upon reasonable request under the circumstances here stated, it is sufficient to state that the Congress having undertaken to legislate specifically with regard to private sidetracks and switch connections in paragraph 9 of section 1, the specific language there used of necessity points the course for complainants to follow. It is there made the duty of common carriers to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with their rails by shippers tendering interstate traffic for transportation, where such connection is reasonably practicable, can be put in with safety, and will furnish sufficient business to justify its construction and maintenance. Upon failure of the carriers to install and operate such a switch connection upon the shippers' written application, we may make an order for it to comply with the provisions of section 1. But, as construed by us in several cases, the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C., 587. *Ralston Townsite Co. v. M. P. Ry. Co.*, 22 I. C. C., 354. *Virginia Coal & Fuel Co. v. N. & W. Ry. Co.*, 55 I. C. C., 61. Here complainants had no sidetrack when their application was made. Their request was for a sidetrack and switch connection both to be located on defendant's right of way. The defendant's obligation under paragraph 9 of section 1 extended only to the furnishing of a "switch connection," and there was no sidetrack with which to connect.

Upon the whole record we find that defendant's refusal to establish a siding and switch connection for complainants was not unreasonable or otherwise in violation of law, and an order dismissing the complaint will be entered.



No. 11558.

**IN THE MATTER OF INTRASTATE FARES OF THE  
CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD  
WITHIN THE STATE OF ILLINOIS.**

*Submitted May 18, 1921. Decided June 14, 1921.*

1. Certain intrastate fares maintained by petitioner within the state of Illinois which are lower than the corresponding interstate fares maintained by petitioner between points in Illinois and points in Wisconsin, found to be unduly prejudicial to persons and localities in interstate commerce, unduly preferential of persons and localities in intrastate commerce, and unjustly discriminatory against interstate commerce.
2. Fares prescribed which will remove such preference, prejudice, and discrimination.

*Ralph R. Bradley* for petitioner.

*Edward J. Brundage*, attorney general of Illinois, by *William C. Clausen*, for state of Illinois.

*Morten T. Culver* for attorney general of Illinois, Public Utilities Commission of Illinois, and municipalities of Evanston, Highland Park, Highwood, North Chicago, and Waukegan, Ill.

*Carl D. Jackson* and *B. E. Miller* for Railroad Commission of Wisconsin.

*George I. Hicks* for village of Glencoe, Ill.; *Albert C. Wenban* for village of Wilmette, Ill.; *Elmer E. Jackson* for village of Kenilworth, Ill.; and *Frederick Dickinson* for village of Winnetka, Ill.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

This is an investigation upon petition of the Chicago, North Shore & Milwaukee Railroad, which operates an electric interurban line between Chicago, Ill., and Milwaukee, Wis., and intermediate points in Illinois and Wisconsin, to determine whether the present passenger fares for intrastate travel over its line within the states of Illinois and Wisconsin cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other, or any undue, unreasonable, or unjust discrimination against interstate commerce; and if so, what fares or what maximum or minimum, or maximum and minimum, fares shall be prescribed in order to remove such advantage, preference, prejudice, and discrimination.

No exceptions were filed to the report proposed by the examiner and the case was submitted without oral argument. Notice was served upon the states of Illinois and Wisconsin.

Petitioner's right of way in Illinois was acquired chiefly through franchises granted by various municipalities to the Bluff City Electric Street Railway Company, a corporation organized under the so-called horse and dummy act of the state of Illinois, an act providing for the incorporation of companies to operate street railways. These franchises provided in terms for the extension of the line in interurban service beyond the borders of the respective municipalities. All of the property of the Bluff City Electric Street Railway Company, including the franchises, was later acquired through assignment and purchase by the Chicago & Milwaukee Electric Railway Company, a corporation likewise organized under the horse and dummy act. Later, the Chicago & Milwaukee Electric Railroad Company, a corporation organized under the general railroad laws of the state of Illinois, acquired all of the property, rights, and franchises of the Chicago & Milwaukee Electric Railway Company. Shortly thereafter the Chicago & Milwaukee Electric Railroad Company of Wisconsin was organized to build a line from the Illinois-Wisconsin state boundary to the city of Milwaukee, and work upon this line was started in 1905. In 1908 a receiver was appointed by the federal courts for these companies and in 1916 their property, rights, and franchises were acquired by petitioner.

Effective September 1, 1920, petitioner's basic ticket fare interstate and intrastate in the state of Wisconsin was increased from 2.5 cents to 2.7 cents per mile. By order dated November 29, 1920, the Public Utilities Commission of Illinois denied petitioner's application for authority to increase its intrastate basic fare in that state from 2 to 2.7 cents per mile for want of jurisdiction under an Illinois statute which prohibited, subject to certain qualifications, any common carrier charging for intrastate travel a fare in excess of 2 cents per mile. On November 1, 1920, by tariffs duly filed, petitioner increased its interstate basic ticket fare to 3 cents per mile with proportionate increases in its cash fares and rates for its 25-ride bearer tickets. It has pending before the Wisconsin commission an application for authority to make similar increases in its intrastate fares in that state, and has not pressed its petition for a determination in this proceeding of the issue of undue prejudice so far as its Wisconsin fares are concerned. For this reason we shall make no finding at this time with respect to the fares within that state.

Evidence was submitted as to the unduly prejudicial effect of the lower intrastate fares within Illinois upon persons and localities in interstate commerce. For example, Zion City, Ill., has a large labor-

ing population which is employed in the manufacturing cities of Waukegan, Ill., and Kenosha and Racine, Wis. In traveling over petitioner's line to their places of employment the laborers who work in Wisconsin must pay a 50 per cent higher fare per mile than those who work in Illinois. Milwaukee competes with Chicago for trade in towns on petitioner's line in Illinois and is discriminated against by the lower intrastate fare. The fare from Great Lakes Naval Training Station, Ill., to Chicago, a distance of 34.3 miles, is 69 cents, while the fare from Great Lakes Naval Training Station to Five Mile Road, Wis., approximately the same distance, is \$1.02, a difference of 33 cents in favor of the intrastate traveler. The fare from Great Lakes Naval Training Station to Wilson avenue, Chicago, a distance of 27 miles, is 54 cents, while the fare from the same station to Racine, approximately the same distance, is 84 cents, a difference of 30 cents in favor of the intrastate traveler. The fare from Great Lakes Naval Training Station to Wilmette, Ill., a distance of 18.3 miles, is 37 cents, while the fare from the same station to Kenosha, approximately the same distance, is 55 cents, a difference of 18 cents in favor of the intrastate traveler. These instances are given of record as typical.

The record shows that the number of patrons who defeat or who attempt to defeat the interstate fare through the purchase of intrastate tickets is increasing. A passenger from a point in Illinois may purchase an intrastate ticket to Zion City, which is the nearest stop to the state line, may leave the train there, and purchase an interstate ticket to his Wisconsin destination. A salesman may purchase an intrastate round-trip ticket from Chicago to Waukegan, and after transacting his business at Waukegan purchase an interstate round-trip ticket to some point in Wisconsin. On his interstate return trip from the Wisconsin point to Chicago he tenders the two return tickets in payment of his fare. As the cost of these tickets is less than the interstate fare from the Wisconsin point to Chicago, this practice has tended to break down and defeat the latter fare.

Intrastate passengers and interstate passengers may and do ride on the same trains and in the same coaches of petitioner. Many of the interstate passengers are carried on high-speed through trains which make few stops, but passengers holding interstate tickets also ride upon the so-called local trains which do the bulk of the intrastate business. The intrastate passengers in Illinois enjoy a basis of fares lower than the fares exacted of interstate passengers, and also lower than the fares paid by intrastate passengers in Wisconsin.

The petitioner estimates that the aggregate value of its property held for and used in the service of transportation, excluding local street-railway lines in Waukegan, approximates \$15,913,973. This is

based upon the property account set up on June 28, 1917, after certain adjustments had been made with the approval of our bureau of carriers' accounts, plus capital expenditures since that date under the authority of the state commissions and minus an allowance for depreciation. It is estimated that a uniform 3-cent fare will yield during the year ending October 31, 1921, an operating income of \$629,176, or a return of 3.96 per cent on the above estimated value. This operating income is based upon an estimated decrease of 10 per cent in the volume of traffic under that of the previous year. If the volume of traffic remains the same, it is estimated that a uniform 3-cent fare will yield an operating income of \$1,096,796, a return of 6.89 per cent. The operating income of petitioner, with the lower intrastate fares in effect was \$761,954, a return of 4.79 per cent, for the year ended October 31, 1920. If the Illinois intrastate fare is not increased, it is estimated that petitioner's operating income for the year ending October 31, 1921, on the same volume of traffic as during the previous year would be \$639,283, a return of 4.02 per cent; on a volume of traffic 10 per cent lower than the previous year an operating income of \$218,734, a return of 1.37 per cent. Petitioner also submitted exhibits showing that because of the lower intrastate fares in Illinois it suffered in revenues during the year ended October 21, 1920, on its through service between Chicago and Waukegan, and on its local service between Evanston, Ill., and Milwaukee, between Evanston and Waukegan, and between Lake Bluff, Ill., and Area, Ill., respectively. Petitioner competes for both interstate and intrastate passenger traffic between Chicago and Milwaukee with the Chicago & North Western Railroad, which maintains the standard 3.6-cent basis of fare. It is also testified that petitioner's securities issued since January 1, 1917, have been sold on an average interest-bearing basis of 8.53 per cent.

The state of Illinois challenges our jurisdiction with respect to the intrastate fares of petitioner. Together with the municipalities represented at the hearing, it urges that the intrastate service of petitioner within Illinois with respect to which an increase is sought is essentially a street-railway service. No brief has been filed in behalf of the state or of the municipalities. However, their position is that petitioner's intrastate service in Illinois should be regarded as separate and distinct from its through interstate service, and that as to the former petitioner is not a railroad engaged in general transportation subject to the interstate commerce act. This contention is based on two grounds: First, that the franchises granted to petitioner's predecessors by the various municipalities through which its line runs were in terms franchises to street railways, specifically conferring upon the grantees the right to use the streets and requir-

ing them to make stops at all street intersections; and, second, that petitioner's local intrastate service is that of a street railway, to wit, it operates the city service of Waukegan; it operates over 100 local trains, consisting chiefly of single cars, making stops at substantially every street intersection in the Illinois towns north of Evanston; affords transfer privileges to the city lines of Chicago and Waukegan; and its intrastate fares in Illinois are on a zone instead of a mileage basis. The state of Illinois further asserts that while petitioner now has authority to operate a through railroad service, it is still required to maintain these local street-railway services and that, so far as the municipalities traversed by it are concerned, its through railroad service is incidental. Petitioner admits that it furnishes local street-railway service in Waukegan, but points out that this service is segregated under special tariffs approved by the Public Utilities Commission of Illinois and that it asks no relief in this proceeding as to this local service. It further points out that its intrastate fares, which counsel for the Illinois authorities contend are fixed on a zone basis, have been expressly recognized by the Illinois commission as fixed on a basis of mileage, namely, distances between the main-point stops in the various municipalities.

As tending to show that it is not a street railway in its interurban operations, petitioner relies upon the fact that it operates daily upward of 40 limited trains between Chicago and Milwaukee and 96 express trains between Chicago and Waukegan; that this service is practically doubled on Saturday afternoons, Sundays, and holidays; that intrastate passengers travel on its express trains side by side with interstate travelers; that its interurban cars are used interchangeably in intrastate and interstate service and are heavier and larger than ordinary street cars; that the transfer privileges afforded in Chicago are due to the fact that the petitioner uses the same platforms as the Northwestern Elevated Railroad, over which it has trackage rights in that city; that under the terms of its contract with that company it performs no local service south of Wilmette; that while its principal source of revenue is derived from its passenger business, it operates a merchandise dispatch service between Chicago and Milwaukee and a general freight service on its main line between Highland Park, Ill., and Milwaukee, and on its branch line between Lake Bluff and Area; that it interchanges freight with the Chicago & North Western Railroad and the Chicago, Milwaukee & St. Paul Railway; that of its total trackage in Illinois, 55.4 miles, only 6.51 miles are located in streets or highways; that this small street mileage will very soon be reduced by street vacations to 2.86 miles; that whatever the character of the original franchises granted to petitioner's predecessors, petitioner's line is now operated under the gen-

eral railroad laws of Illinois and has been so operated since 1902, when its predecessor, the Chicago & Milwaukee Electric Railroad Company, was organized; that petitioner's status as a railroad engaged in general transportation has been specifically recognized by ordinances of the municipalities which it serves and by formal order of the state of Illinois; and that this is the first time in any proceeding that its status as such a railroad has been questioned. The facts of record warrant the conclusion that in its interurban operations, both state and interstate, petitioner is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and by this Commission. *Jurisdiction over Urban Electric Lines*, 33 I. C. C., 536; *St. Louis, Mo.-Illinois Passenger Fares*, 41 I. C. C., 584; *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S., 324.

We find that the petitioner is a common carrier by railroad subject to the interstate commerce act; that there are no conditions affecting transportation within Illinois which justify the maintenance of a lower basis of intrastate fares therein over petitioner's interurban lines than the basis of fares contemporaneously applicable to the interstate transportation of passengers to, from, or through the state over such line; that its interstate passenger fares, as increased by its tariff filed with us effective November 1, 1920, and now in effect, are not higher than is reasonable for interstate transportation; that the failure of petitioner to increase its intrastate fares upon its interurban lines correspondingly within the state of Illinois has resulted and will result in intrastate fares lower than the corresponding interstate fares, in undue prejudice to persons traveling in interstate commerce over petitioner's interurban lines within the state of Illinois and between points in the state of Illinois and points in the state of Wisconsin and to localities upon said lines within Wisconsin, in undue preference of and advantage to persons traveling over petitioner's interurban lines intrastate in Illinois and to localities upon said lines within Illinois, and in unjust discrimination against interstate commerce. These findings apply only to petitioner's basic ticket fares, cash fares, and its 25-ride bearer tickets. The record shows that the rates on its other multiple forms of tickets are uniform as to state and interstate commerce.

We further find that the undue prejudice and preference and unjust discrimination found to exist can and should be removed by making increases in said intrastate passenger fares which shall result in fares corresponding, distance considered, with the interstate passenger fares hereinbefore found reasonable.

Schedules of fares in compliance with the order herein may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the authorities of the state of Illinois or of any other party in interest to apply in a proper manner for a modification of the findings and order as to any specific intrastate fare on the ground that the latter is not related to the interstate fares in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

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No. 11688.

ST. LOUIS COKE & CHEMICAL COMPANY

v.

ALTON & SOUTHERN RAILROAD COMPANY ET AL.

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*Submitted April 21, 1921. Decided June 23, 1921.*

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Rates on iron ore, in carloads, from producing points in Wisconsin and Michigan to Granite City, Ill., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.

*P. B. Nelson, George T. Buckingham, William E. Rosenbaum, and Defrees, Buckingham & Eaton* for complainant.

*E. D. Brigham* for Chicago & North Western Railway Company; *C. H. Stinson* for Wabash Railway Company; and *S. G. Lutz* for Chicago & Alton Railroad Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.  
BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing pig iron, coke, and by-products at Granite City, Ill., attacks as unreasonable, unjustly discriminatory, and unduly prejudicial the rates on iron ore, in carloads, from Hurley, Florence, and Baraboo, Wis., Iron River, Iron Mountain, and Ironwood, Mich., and points taking the same rates, to Granite City. We are asked to prescribe reasonable rates for the future, and to award reparation on shipments which moved after March, 1920. Rates will be stated in amounts per ton of 2,240 pounds, unless otherwise specified.

Granite City is on the Wabash, the Chicago & Alton, and other lines, a short distance north of East St. Louis, Ill., and within the switching district of that city. The points of origin are in the iron ranges of the upper peninsula of Michigan and northern Wisconsin, except Baraboo which is in the southern part of Wisconsin. The rates assailed are group rates which apply as well from other producing points in the Gogebic and Menominee ranges. Complainant's plant is new and when completed will have a capacity of between two and three million tons of ore annually. Ore has been moving to the plant since May, 1920. The amount received up to the time of the hearing was 110,000 tons, chiefly from Ironwood, Florence, and Baraboo.

Prior to August 26, 1920, the rates to Granite City were \$2.10 from Baraboo and \$3 from the other points of origin. On that date these rates were increased 35 per cent and became \$2.835 from Baraboo and \$4.05 from the other points.

Complainant's exhibits compare the rates to Granite City with rates to Pittsburgh, Pa., and Ironton, Ohio, of which the following are illustrative:

From—	To Pittsburgh.		To Ironton.		To Granite City.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Ironwood.....	967	\$3.41	1,026	\$3.52	666	\$4.05
Florence.....	750	3.16	813	3.27	623	4.05

The foregoing rates to Pittsburgh and Ironton are rail-and-lake combinations composed of the rail rate to the Lake Superior or Lake Michigan port, the contract rate of the lake vessels to the Lake Erie port, and the rail rate beyond, plus certain handling charges. The rates to Granite City apply all rail.

Complainant refers to rates on numerous commodities, said to be of greater value than iron ore, moving between various points in this general territory, which, for comparable distances, yield less car-mile revenue than do the rates assailed. The car-mile revenues with which comparison is made are, for the most part, based on the applicable minimum weights. The tariffs publishing the rates on iron ore here in issue provide that the minimum weight shall be three tons less than the marked capacity of the car. In computing car-mile earnings on ore, complainant uses a weight of 96,280 pounds, stated to be the average minimum weight, under the tariff rule, of 25 cars actually moved.

It appears from complainant's exhibits that over 4,000,000 tons of coal move annually from mines in Illinois to destinations in Min-  
62 I. C. C.



nesota and Wisconsin, and that a large part of the equipment used returns empty. If reasonable rates are established there will be an annual movement of approximately 2,400,000 tons of iron ore, as complainant contends, from the northern ranges to Granite City, thus materially reducing the percentage of empty-car movement.

Complainant urges that the rates assailed do not bear a proper percentage relationship to rates on coal moving from mines in the vicinity of Granite City to the iron range territory, and refers to many rates on iron ore which are from 50 to 60 per cent of the coal rates in the opposite direction. The record discloses no necessary or recognized relation between rates on ore southbound and on coal northbound.

Traffic officials of the Wabash and Chicago & Alton admitted that the present rates were unreasonable in that they had been increased out of proportion to the increases to the eastern furnaces. In *Increased Rates, 1920*, 58 I. C. C., 220, we concluded for reasons there stated that no increase should be made in the rates on iron ore from the ranges to the upper lake ports. Other iron-ore rates were increased by the percentages approved in that case, with the result that the rates to Granite City were increased 35 per cent, or 73.5 cents in the rate from Baraboo and \$1.05 in the rates from the other points of origin, whereas the total increase in the lake-and-rail rates to the eastern furnaces amounted to from 26 to 36 cents. Rates from some of these points of origin to East St. Louis and Granite City were further increased February 14, 1920, by 20 cents per ton in order to place them on an equality with rates to St. Louis. Doubt as to the propriety of this increase was expressed by defendants' witnesses.

Defendants suggested \$3.25 as a reasonable rate to apply from the points of origin other than Baraboo. This rate apparently would be satisfactory to complainant. A traffic official of the Chicago & North Western, the only other defendant represented at the hearing, while not conceding the unreasonableness of the rates assailed, offered no evidence other than a statement of the ton-mile earnings accruing to that carrier from its divisions of the present and proposed joint rates.

The earnings under the present rate of \$4.05 and the proposed rate of \$3.25, using the distance from Florence, 623 miles, and the average minimum weight of 96,280 pounds, are, respectively, 5.81 and 4.65 mills per net ton-mile, and 27.9 and 22.4 cents per car-mile.

The rate from Baraboo was 90 cents less than that from Florence prior to the general increase of 1920, and if the same amount were deducted from the proposed Florence rate of \$3.25, would be \$2.35. The record affords no better basis for fixing the maximum reasonable rate from Baraboo.

We find that the rates assailed and applicable prior to August 26, 1920, were not unreasonable, but that the rates applicable on and after August 26, 1920, were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed a rate of \$3.25 per ton of 2,240 pounds from Hurley and Florence, Wis., Iron River, Iron Mountain, and Ironwood, Mich., and points taking the same rates, and a rate of \$2.35 per ton of 2,240 pounds from Baraboo, Wis.; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An order for the future will be entered.

No. 11776.

MINNESOTA FARES AND CHARGES.

IN THE MATTER OF INTRASTATE FARES AND CHARGES  
OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY AND OTHER CARRIERS BETWEEN POINTS  
IN THE STATE OF MINNESOTA.

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*Submitted April 26, 1921. Decided June 22, 1921.*

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Upon further hearing order entered in pursuance of our original report herein, 59 I. C. C., 502, modified by striking out the names of certain carriers.

*A. L. Flinn* for Minnesota Railroad and Warehouse Commission.  
*E. D. Luce* for Electric Short Line Railway Company; *A. Ueland* for Minneapolis, Red Lake & Manitoba Railway Company; *Richard L. Kennedy* for Minnesota Transfer Railway Company; and *A. H. Losow* and *H. P. Ramsey* for Minnesota Northwestern Electric Railway Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

*ATCHISON, Commissioner:*

After the entry of our order herein, December 8, 1920, in conformity with the original report made by us in this matter, 59 I. C. C., 502, the Minnesota Railroad and Warehouse Commission, herein referred to as the Minnesota commission, brought to our attention a claim to the general effect that certain carriers embraced in our order operating wholly intrastate in Minnesota were improperly included therein. On our own motion we reopened the case for further consideration as to those carriers.

The carriers involved here are the Duluth & Northern Minnesota Railway Company, Duluth & Northeastern Railroad Company, Electric Short Line Railway Company, Hill City Railway Company, Interstate Car Transfer Company, Minneapolis & Rainy River Railway Company, Minneapolis, Red Lake & Manitoba Railway Company, Minneapolis, Northfield & Southern Railway, Minnesota, Dakota & Western Railway Company, Minnesota Northwestern Electric Railway Company, Minnesota Transfer Railway Company, and St. Paul Bridge & Terminal Railway Company. Of these, only the Duluth & Northeastern Railroad Company was among the petitioning carriers upon whose petition this proceeding was instituted.

The Electric Short Line, Minneapolis, Red Lake & Manitoba, Minnesota Northwestern Electric, and Minnesota Transfer were represented at the supplemental hearing. The Minneapolis, Northfield & Southern is now part of the Electric Short Line. The other carriers were served with notice of the hearing, but did not appear.

The Minnesota Transfer Railway Company, St. Paul Bridge & Terminal Railway Company, and Interstate Car Transfer Company are not passenger carriers. The Minnesota commission introduced evidence tending to show that the other carriers named are not engaged in the transportation of passengers in interstate commerce.

The Electric Short Line makes reports to us as a steam carrier. It is not engaged in the transportation of passengers in interstate commerce. It competes for intrastate passenger traffic with the Great Northern between Minneapolis and Hutchison, Silver Lake, Long Lake, and Wayzata, Minn., and with the Chicago, Milwaukee & St. Paul between Minneapolis and Hutchison. The extent of this competition is not disclosed. This carrier contends that as it was in need of additional revenues, and our order contemplated an increase purely for revenue purposes it properly increased its rates under that order.

The intrastate rates of the Minneapolis, Red Lake & Manitoba may be used in connection with interstate trips. While this carrier does not issue interline tickets, it honors such tickets when they are issued over its line by other carriers. Its interstate passenger business constitutes less than 1 per cent of its total passenger traffic.

Our original order in this case ran against the carriers named therein only "as they respectively participate in the transportation." None of the carriers involved here "participates in the transportation," as that term is used in the order. In the interest of clarity, that order will be modified by striking therefrom the corporate titles of the carriers previously named herein.

INVESTIGATION AND SUSPENSION DOCKET No. 1297.  
FARES OF THE WASHINGTON-VIRGINIA RAILWAY  
COMPANY.

*Submitted April 2, 1921. Decided June 10, 1921.*

Proposed increased single and commutation fares of the Washington-Virginia Railway Company approved in part.

*John S. Barbour and Frederick L. Ballard for respondent.*

*Frank Lyon, Conrad Syme, E. W. R. Ewing, James R. Caton, H. Noel Garner, and Frank L. Ball for various protestants.*

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND LEWIS.  
By DIVISION 1:

By schedules filed to become effective February 13, 1921, the Washington-Virginia Railway Company, respondent herein, proposes to increase its one-way and its 52-trip commutation fares between all points on its system and Washington, D. C., as hereinafter described. Upon protest of individuals and organizations whose members are patrons of the railway, the schedules have been suspended until July 13, 1921.

Respondent operates an electric line extending from Twelfth street and Pennsylvania avenue northwest, Washington, D. C., south across the Highway bridge over the Potomac River to Arlington Junction, Va., where it divides into the Mount Vernon division running south through Alexandria, Va., to Mount Vernon, Va., and the Falls Church division, running west through Clarendon, Va., to Fairfax, Va., distances of 16 and 20.8 miles,<sup>1</sup> respectively, from the Twelfth street terminal. A branch of the Falls Church division extends northeasterly from Clarendon 3 miles west of Arlington Junction, to Rosslyn, the original eastern terminus of the line, at the Virginia end of the Aqueduct bridge opposite Georgetown, D. C. The Falls Church division, originally independent of the Mount Vernon branch, extended from Fairfax to Rosslyn. Commutation tickets from stations on that division have always read to Rosslyn, the commuter paying local fares of other car systems thence to final destination in Washington. A few years ago, after the consolida-

<sup>1</sup> There are 20.18 miles of road on the Mount Vernon division and 24.38 miles of road on the Falls Church division, a total of 44.51 miles. There is an equivalent of 62.47 miles of single track on the two divisions.

tion of the Falls Church and Mount Vernon lines, the Clarendon cut-off was constructed from Clarendon, on the Falls Church division, to Arlington Junction, on the Mount Vernon division. If commuters on the Falls Church division prefer to travel over this cut-off to Twelfth street in Washington, rather than to the original terminus in Rosslyn, the Rosslyn commutation coupon plus 5 cents is charged. The distance from Clarendon to Rosslyn is 2.2 miles, and to the Twelfth street terminal 5.9 miles, which makes a difference in distance of 3.7 miles over Rosslyn to the Twelfth street station from Clarendon and points west thereof on the Falls Church branch. Of the respondent's revenues 97.5 per cent are derived from passenger travel, a large percentage of which is in commutation service to and from Washington.

The proposal here is to increase the single fare, now on the basis of 2.5 cents per mile, to 3 cents per mile; the minimum fare from 5 cents to 8 cents; the 52-trip commutation ticket 25 per cent, and to restrict its use to the calendar month instead of from the first or sixteenth of the calendar month, as at present; to abolish the 25-trip family commutation ticket, now valid for use by seven or less members of a family for three months; and to increase the cash payment from 5 cents to 6 cents on 52-trip tickets from Falls Church branch points to Rosslyn, when the commuter desires to go to Twelfth street. No change is proposed in the 46-trip school commutation ticket. The present and proposed commutation fares from representative stations on the respondent's line to Twelfth street are as follows:

To Twelfth Street Station, Washington, D. C., from—	Miles.	52-trip.		25-trip.	
		Present.	Proposed.	Present.	Proposed.
Alexandria, Va.....	7.9	\$4.45	\$5.55	\$2.75	None.
Clarendon, Va.....	5.9	5.45	6.70	2.63	Do.
Ballston, Va.....	6.8	5.45	6.70	2.63	Do.
Falls Church, Va.....	9.6	7.00	8.62	3.45	Do.
Vienna, Va.....	15.5	8.38	10.35	5.38	Do.
Fairfax, Va.....	20.8	10.52	13.02	7.85	Do.

The increased fares are proposed because of the financial needs of the respondent, which has defaulted in the payment of interest on its bonds and other obligations, including unsecured notes. At the suggestion of the holders of the unsecured notes, through their protective committee, the property, since the fall of 1920, has been operated by a firm of consulting engineers in Philadelphia, who specialize in the operation and reconstruction of financially embarrassed public service properties.

The following is an excerpt from a comparative income and expense account of the respondent as of December 31, 1919, December 31, 1920, and as estimated, including the proposed increases, for the year ending December 31, 1921:

	1919	1920	1921 (estimated). <sup>1</sup>
Total operating revenue.....	\$979,911	\$1,045,807	\$1,220,269
Total maintenance.....	155,751	175,893	220,508
Total operating expenses.....	535,532	647,645	662,584
Gross corporate income.....	244,273	163,637	269,596
Total interest.....	214,520	280,809	280,404
Balance available for renewal reserve.....	29,753	<i>Def. 135,678</i>	<i>Def. 19,806</i>
Renewal reserve.....	7,235	7,200	<i>Def. 89,453</i>
Balance to surplus.....	\$ 22,518	<i>Def. 148,878</i>	<i>Def. 109,859</i>

<sup>1</sup> Based on an equal division between straight fares and 52-trip tickets of the 25-trip family ticket, and on a decrease of 10 per cent in the volume of travel and upon 1920 costs of operation. The number of revenue passengers carried increased 4.8 per cent in 1916, 17.8 per cent in 1917, 40.5 per cent in 1918, 8.48 per cent in 1919, and 2.85 per cent in 1920. In January, 1921, there was a decrease of 10 per cent and for the first 20 days of February a decrease of 6 per cent in the number of passengers carried during the corresponding periods in 1920.

<sup>2</sup> The surplus was \$63,158 in 1917 and \$105,430 in 1918.

Respondent estimates that the proposed fares will fail, by \$19,806, to meet its expenses of operation and interest charges, and that this deficit will be increased to \$109,259 in the balance-to-surplus account when provision is made for \$89,453 as a renewal reserve, a term here used synonymously with depreciation, and meaning the amount to be set aside for major replacements. Heretofore the only renewal reserve fund has been \$600 a month, the minimum required by our accounting rules, major renewals having apparently been taken care of under the head of operating expenses. Major renewals amounting to \$64,452 are already in sight for 1921, including improvements in Potomac Park in Washington, required by the War Department and the District of Columbia commissioners, and 4.5 miles of new trolley wire between Vienna and Fairfax.

Respondent has \$5,084,000 of outstanding obligations, in the form of mortgage bonds, equipment-trust certificates, and unsecured notes.<sup>2</sup> There are also \$1,378,000 of common stock and \$1,000,000 of preferred stock. The total outstanding stock and bond capitalization is \$7,462,000. A dividend of 5 per cent was paid on the preferred stock for a number of years prior to 1917 or 1918, and a maximum dividend of 3 per cent was paid on the common stock for a number of years prior to 1914. Based on its 44.51 miles of line the respondent's bonds represent approximately \$70,000 per mile; its bonds and other obligations combined, \$180,644 per mile; and its stocks, bonds, and other obligations combined, \$184,075 per mile.

<sup>2</sup> \$178,000 of additional mortgage bonds and \$403,000 of additional unsecured notes are in the company's treasury, and another \$150,000 of unsecured notes have been pledged as collateral for debts or loans. The defaulted interest is that due September 1, 1920, on \$2,100,000 of bonds; January 1, 1921, on the unsecured notes; and January 1, 1921, on \$25,000 of the \$315,000 of the equipment-trust certificates.

What the respondent's bonds brought to the property in the way of cash or its equivalent does not appear of record. The unsecured notes, issued January 1, 1920, and due January 1, 1922, were partly to take care of an accumulated floating debt, partly to pay for 40 new steel cars purchased in 1920 at a cost of more than \$600,000, and partly to pay for the extension of the respondent's line from Alexandria to Camp Humphreys during the war at a cost of \$282,000. The extension is now unproductive to respondent except as a feeder of the decreased volume of traffic to and from Camp Humphreys.

The record does not show any abnormal cost of construction or marked increase in facilities on the respondent's line to absorb these issues of capital. The constituent lines of respondent were constructed long before the recent years of abnormal labor and material costs. Only 11.40 of the 44.51 miles of line are double-tracked. There are no expensive terminals. The equipment consists of 118 cars, including 19 service cars. Only the 40 cars purchased in 1920 are of steel construction. The consulting engineers estimate the value of the property for rate-making purposes at about \$4,000,000, or approximately \$100,000 a mile. Protestants place it at not more than \$2,000,000. No appraisal of the road has been made. The record as a whole plainly indicates that the respondent is greatly overcapitalized and affords no tangible basis upon which alone to determine what should be the measure of a reasonable system of charges for this respondent on the basis of the fair value of its property devoted to the public use. We shall therefore examine other factors presented by the record, which are usually considered in the making of rates.

There has been only one increase in the respondent's fares since 1914. That was on December 7, 1919, when following a request for an increase of approximately \$250,000, or about 25 per cent, we permitted increases totaling \$65,896, or about 6.7 per cent. Compared with this one increase, the straight fares of the steam roads since 1914 have been increased over 50 per cent, and commutation fares of those roads have been increased, first, 10 per cent in 1918, and again, 20 per cent in 1920. The present straight fares of the steam roads are generally 3.6 cents per mile. The basic fare proposed by the respondent is 3 cents per mile.

One of the principal witnesses for the protestants, an accountant, who presented an analysis of operating results from the respondent's reports to us, regards 3 cents per mile as a not unreasonable basic charge under present-day conditions, and views the present relationship of the 52-trip tickets and the single fare as reasonable. His main concern is with the proposed elimination of the 25-trip ticket. The principal cause of complaint of all protestants is the proposed



discontinuance of this ticket, which is used by some to supplement the 52-trip book; by others, whose daily occupation is dependent upon the state of the weather and who may not be required to make the 52 trips per month provided by the other form of book; and by members of households for shopping and recreation in Washington. The reasons for its proposed discontinuance are the effect it has had upon revenues; the alleged granting of the commutation rate to a class of travelers who, because of the infrequency of the required travel under the present book, are really not commuters, and who are therefore said to be given an undue preference over other casual passengers at the single fare; and the alleged difficulty of properly policing the ticket. There was no substantial evidence of abuse. Respondent's real objection is the long period of validity of the ticket and the low rate, and it was suggested that, if continued, the ticket should be sold on the basis of approximately 80 per cent of the single fare and be limited to the use of not more than five members of the family for two months. Protestants suggest 70 per cent of the single fare as reasonable, and make no serious objection to the other restrictions.

The following table, taken from respondent's exhibits, shows comparisons of the proposed rates for 52-trip tickets from important stations on respondent's line with rates for similar distances and commutation tickets now used upon other interurban lines serving Washington:

From—	Miles.	52 trip.	Washington, Baltimore & Annapolis.		Washington & Old Dominion.		City & Suburban.	
			Miles.	52 trip.	Miles. <sup>2</sup>	52 trip.	Miles.	52 trip.
Alexandria, Va. ....	17.9	\$5.58	7.9	\$5.12	8.1	\$3.47	7.4	\$5.36
Mount Vernon, Va. ....	16	9.04	16	9.00	15.9	10.53	.....	.....
Ballston, Va. ....	3.1	3.58	3.1	4.32	.....	.....	.....	.....
Falls Church, Va. ....	5.9	5.50	5.9	5.40	5.8	7.37	.....	.....
Dunn Loring, Va. ....	9.5	7.01	9.5	6.65	9.9	9.46	9.6	6.79
Vienna, Va. ....	11.8	7.23	11.8	7.56	11.2	10.01	.....	.....
Oakton, Va. ....	14.4	8.05	14.4	8.46	14.2	10.72	13	7.90
Fairfax, Va. ....	17.1	9.90	17.1	9.54	15.9	10.53	16.1	6.39

<sup>1</sup> Distances from Alexandria and Mount Vernon are to Twelfth street station; from respondent's other stations the distances are to Rosslyn, Va.

<sup>2</sup> Distances are to Twelfth street and Pennsylvania avenue and include the 7.5-cent city fare.

The proposed 52-trip rates compare favorably with the rates paid by Washington suburban passengers who use the lines of other electric railways entering the city. The record also shows that the existing relationship between the straight single fare and the 52-fare ticket is not materially changed by these proposed increases.

The 52-trip rate and the 25-trip rate from Clarendon, when used as a part of the interstate rate to Twelfth street, should be lower

than from Ballston, which is 0.9 of a mile beyond Clarendon. The single fare is lower, and in the revision of December, 1919, respondent proposed to make all the fares lower, in cents, as follows:

	Rates in effect Dec. 6, 1919.	Rates proposed in De- cember, 1919, by respond- ent.	Rates author- ized Dec. 7, 1919, by I. C. C.	Rates proposed.
<i>Single fare.</i>				
(a) Clarendon to Rosslyn.....	\$0.05	\$0.06	\$0.05	\$0.06
(b) Ballston to Rosslyn.....	.05	.10	.06	.10
Percentage (b) to (a).....	100	166	160	125
<i>52-trip ticket.</i>				
(a) Clarendon to Rosslyn.....	2.60	2.60	2.86	3.58
(b) Ballston to Rosslyn.....	2.60	2.90	2.86	3.58
Percentage (b) to (a).....	100	114	100	109
<i>25-trip ticket.</i>				
(a) Clarendon to Rosslyn.....	1.35	1.25	1.38	.....
(b) Ballston to Rosslyn.....	1.25	1.62	1.38	.....
Percentage (b) to (a).....	100	130	100	.....

NOTE.—To Rosslyn the distance of 3.1 miles from Ballston is 141 per cent of the distance of 2.2 miles from Clarendon. To Twelfth street the distance of 6.7 miles from Ballston is 115 per cent of the distance of 5.8 miles from Clarendon.

From Clarendon and Ballston the rate per trip, under both the present 52-trip ticket and the present 25-trip ticket, is 5.5 cents; from Clarendon, the present commutation fare is one-half cent higher than the present single fare; the present single fare from Ballston is 160 per cent, and the proposed single fare 125 per cent, of the corresponding fares from Clarendon, while both the present and the proposed commutation fares from Ballston are the same as from Clarendon; in December, 1919, respondent recommended commutation fares from Ballston higher than from Clarendon, 14 per cent higher for the 52-trip ticket, and 30 per cent higher for the 25-trip ticket. In its proposal of 25-trip tickets of 80 per cent of the single fares the respondent's proposed rate of \$2 from Ballston is 111 per cent of its proposed rate of \$1.80 from Clarendon. If we make the proposed 52-trip rate of \$3.58 from Ballston represent 111 per cent of an appropriate 52-trip rate from Clarendon, the rate from Clarendon to Rosslyn would be \$3.22, which we regard as reasonable.

The single fares to Rosslyn, and the commutation fares to Rosslyn when the latter are not used as a part of the interstate fares to Twelfth street, are intrastate and subject to state regulation.

Our attention is called to respondent's practice of collecting 5 cents in addition to fares up to 30 cents, and 10 cents in addition

to fares of more than 30 cents, when a ticket is not purchased at stations having ticket offices. Whether this charge is reasonable in amount and in application is not an issue before us.

We find:

(1) That the proposed interstate single fares, which approximate 3 cents a mile, have been justified.

(2) That the proposed 52-trip commutation fares, including the commutation fares from points on the Falls Church division to Rosslyn when used as a part of the interstate fares to Twelfth street, in Washington, have been justified, except that from Clarendon the 52-trip interstate rate to Rosslyn should not exceed \$3.22.

(3) That the proposed discontinuance of the 25-trip family ticket has not been justified, but should be continued at not to exceed 70 per cent of the single fare, and may be limited to the use of five members of the family for two months, under conditions similar to those in the existing tariff.

(4) That the proposed increase from 5 cents to 6 cents in the cash fare charged in addition to the Rosslyn commutation coupon for transportation to Twelfth street in Washington from points on the Falls Church division has not been justified.

An order will be entered requiring respondent to cancel the suspended schedules, but without prejudice to the filing of new tariffs in conformity with our findings herein on not less than five days' notice.

62 I. C. C.

No. 11270.

PACIFIC COAST STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC  
COMPANY, ET AL.

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Submitted September 4, 1920. Decided June 6, 1921.

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Rates on steel ingots, in carloads, from San Francisco and South San Francisco, Calif., to Seattle, Wash., found justified. Complaint dismissed.

*Sanborn & Roehl and A. B. Roehl* for complainant.

*C. W. Durbrow, Elmer Westlake, and Frank B. Austin* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

HALL, Commissioner:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures open-hearth steel products at San Francisco and South San Francisco, Calif. It alleges that the rates charged by defendants on 73 carloads of steel ingots shipped between October 24, 1918, and June 18, 1919, inclusive, from San Francisco and South San Francisco to Seattle, Wash., were illegal, unreasonable, and unduly prejudicial. It asks for reparation and the establishment of a rate not exceeding 37.5 cents. Rates are stated in amounts per 100 pounds. By present rates are meant those in effect prior to the general increases authorized in 1920.

The ingots were from 11 to 15 feet in length, 22 to 34 inches in diameter, octagonal in cross section, cast in molds, and weighed up to 10 tons apiece. They were shipped on flat cars just as they came from the mold, except that a foot or two was cut off from the upper end to remove the part containing pipes or air holes and other imperfections. At destination the ingots were reheated and forged into ship shafting. The average weight of the shipments exceeded 100,000 pounds. They moved over the lines of the Southern Pacific to Portland, Oreg., and the Oregon-Washington beyond, a distance from San Francisco of 929 miles and from South San Francisco about 920 miles. Six carloads originated at San Francisco and the others at South San Francisco. The charges collected on the six

carloads were based on a combination of 52.5 cents applicable to ingots, composed of class-D rates of 35 cents from San Francisco to Portland and 17.5 cents beyond; on all but one of the others the same combination with the addition of a 3-cent commodity rate from South San Francisco to San Francisco, aggregating 55.5 cents; and on the excepted shipment a combination rate of 50.5 cents, composed of 6.5 cents, fifth class, to San Francisco and commodity rates, applicable on castings, of 25 cents to Portland and 19 cents beyond, resulting in an undercharge. Pursuant to *South San Francisco Chamber of Commerce v. S. P. Co.*, 53 I. C. C., 285, defendants on September 1, 1919, provided for application from South San Francisco of the rates on ingots and castings from San Francisco to Seattle, and these rates are still in effect.

Complainant contends that the assessment of the ingot rates on these shipments was illegal and that the rates on castings were applicable. The rates on castings were 44 cents from San Francisco, a combination of the 25-cent and 19-cent rates last mentioned, and 47 cents from South San Francisco, made by addition thereto of the 3-cent commodity rate from South San Francisco. This contention is based solely on the fact that the ingots were made by casting the molten steel in molds. A witness for defendants testified that the terms ingots and castings referred to different articles and have well-defined meanings in the trade. Molten steel cast into convenient shape for handling, whether square or octagonal in cross section, is an ingot and constitutes raw material out of which an article of some different size and shape is to be made. When cast in molds accurately fashioned from patterns to produce the particular sizes and shapes required for a specific article it is a casting, which comes from the mold in the same general form that it retains as a finished article. The consolidated classification, which deals with general and not with special transportation conditions, rates ingots class D and castings fifth class in western territory. The distinction seems to be well recognized and it is clear that the rates on ingots and not those on castings were the rates applicable.

Complainant further contends that the rates charged were unreasonable to the extent that they exceeded the commodity rate of 37.5 cents on manufactured iron and steel articles, such as angles, bars, beams, and channels, in effect then and now from San Francisco to Seattle, which, under the tariffs, applied through South San Francisco and was made subject to the provisions of rule 77 of Tariff Circular 18-A. It was testified that such manufactured articles are of higher grade and value than raw material in the form of ingots, and shown that in the westbound transcontinental tariffs, and also in tariffs applying in several different sections of the country, ingots

are accorded the same rates as the manufactured articles named. But complainant's witness admitted that these large ingots complied with the specifications for and were forged into ship shafting, while the ingots from which the smaller iron and steel articles are cast, after remelting, weigh from 1,300 to 2,000 pounds. Ship shafting apparently requires a high grade of steel and is rated either fifth class or class A, depending upon the degree of finish. The rate on both these classes from South San Francisco in effect when the shipments moved was 63 cents, and thus higher than the rate charged.

Defendants apparently concede that ingots should not ordinarily take higher rates than these manufactured articles but insist that the 37.5-cent commodity rate was the result of active water competition which did not affect transportation of ingots in the same way. Their witness testified that in an investigation conducted in 1916 it was developed that boat lines were handling manufactured iron and steel articles from San Francisco to Seattle at a rate of 25 cents, including wharfage. Defendants accordingly established on January 17, 1917, a rate of 30 cents from San Francisco to Seattle on the same kind of articles in order to participate in the traffic. This rate, with certain changes in description, remained in effect until increased on June 25, 1918, to 37.5 cents, the present rate, under general order No. 28 of the Director General of Railroads. But the movement of heavy ingots was not affected by water competition to the same degree. The boat lines assessed, in addition to their 25-cent rate, a so-called heavy-lift charge, ranging from 25 cents per 100 pounds on articles weighing from 5 to 6 tons to 45 cents on those weighing from 9 to 10 tons, and certain unloading expenses at Seattle. On shipments from South San Francisco the rail rate to San Francisco must be added to the boat charges. The aggregate exceeded defendants' ingot rates. These rates, defendants claim, are lower for the transportation service rendered than they might properly be because held down by the general and keen competition by water which affects the whole rate fabric of the Pacific coast.

Upon all the facts of record it does not appear that the 37.5-cent rate applicable to the manufactured iron and steel articles is a proper measure of the reasonableness of the rates on ingots.

There was substantially no showing of competition or undue prejudice as between these ingots and the manufactured iron and steel articles named.

Complainant did not stress comparison between the rates on castings and on ingots except in connection with its contention of illegality. The maintenance of commodity rates on castings lower than the class rates on ingots does not of itself establish that the latter

are too high. This movement of ingots was developed during the war. No shipments were made before October 24, 1918, and none has been made since June 18, 1919. The carload minimum on ingots was 50,000 pounds; on the iron and steel articles named, 40,000 pounds; and on castings, 30,000 pounds. The earnings at the rates applicable on ingots from South San Francisco were 12 mills per ton-mile and 30 cents per car-mile based on the minimum weight, for a haul of about 920 miles. At the rates then applicable to San Francisco and Los Angeles, Calif., Portland, and Seattle, from Minnequa, Colo., the earnings were 12.75 mills per ton-mile and 51 cents per car-mile, based on the minimum weight of 80,000 pounds, for a short-line average haul of 1,473 miles, and from Chicago, Ill., 10 mills per ton-mile and 40 cents per car-mile, based on the same minimum, for an average haul longer by some 700 miles. Ordinarily such earnings should decrease with distance.

Nor did complainant stress the difference in ingot rates between South San Francisco and San Francisco. In the *South San Francisco Case, supra*, in which we required rate parity between those two points, our finding was based solely on undue prejudice and we specifically found that the South San Francisco rates were not unreasonable. The record is devoid of evidence which would support an award of reparation on a finding of undue prejudice, and any undue prejudice which may have existed between South San Francisco and San Francisco has since been removed pursuant to our order in that case.

We are of opinion and find that the rates assailed have been justified. The complaint will be dismissed.

No. 5265.

L. WERTHEIM COAL & COKE COMPANY  
v.  
LEHIGH VALLEY RAILROAD COMPANY.

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*Submitted March 29, 1920. Decided June 10, 1921.*

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1. Rates on anthracite coal, in carloads, from points in the Lehigh and Wyoming regions of Pennsylvania to Jersey City, N. J., from 1906 to 1911, inclusive, found unreasonable to the extent that they exceeded rates per long ton of \$1.45 on prepared sizes and \$1.35 on smaller sizes. Reparation awarded.
2. Other allegations considered and not sustained.

*Eugene W. Leake* for complainant.

*E. H. Boles* and *R. W. Barrett* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

Defendant filed exceptions to the report proposed by the examiner.

The complaint was filed October 21, 1912. Complainant, a corporation, then conducted a retail coal business at Jersey City, N. J., buying at mines in the Pennsylvania anthracite district, shipping to Jersey City, and selling or making delivery from its yard located on land leased from defendant near defendant's terminal on the Hudson River. In accordance with a condition of the lease all coal was shipped over defendant's line. Immediately adjoining complainant's yard and coal pockets were those of the Lehigh Valley Coal Company, hereinafter termed the coal company, and of the E. L. Young Coal Company.

The coal company is a corporation which, during the period here under consideration, was engaged in the mining and wholesale distribution of coal. Some of the pockets of the coal company were used by the Young company and the Curtis-Blaisdell Company, also engaged in retailing coal, but purchasing their supplies from the coal company at Jersey City. All of these retail dealers disposed of the major portion of their coal in New York City, delivering by dray and using the ferries across the Hudson. The Young company and the Curtis-Blaisdell Company were given a reduction of 15 cents per ton from the coal company's circular price on all coal de-

W. L. C. C.



livered by them in New York City, for the alleged purpose of enabling them to compete with a dealer who enjoyed a 15-cent reduction in the freight rate by appropriate provision in tariffs of the Central Railroad of New Jersey, hereinafter called the Jersey Central.

This outline will aid understanding of the many and varied allegations of the complaint, the principal of which are, in substance, that in transporting coal for the coal company defendant violated the commodities clause of the act to regulate commerce; that defendant's rates for transportation of coal to Jersey City from the Buck Mountain, Vulcan, and New Boston collieries in the Lehigh region, and East Boston colliery in the Wyoming region, all in the Pennsylvania anthracite district, during the period from 1906 to 1911 were unreasonable; that defendant loaned to the coal company large sums of money without interest or security, and otherwise aided it financially; that the assistance thus rendered offset the unreasonable freight charges paid by the coal company to defendant and enabled it and its customers to underbid complainant; that the reduction of 15 cents per ton in the price of coal sold by the coal company to complainant's competitors for delivery in New York City was in effect a departure from the tariff rates of defendant; that defendant also discriminated against complainant and in favor of the competitors in the matter of switching service; that defendant collected from complainant improper and discriminatory demurrage charges; and that defendant further subjected complainant to unjust discrimination in the matter of credit for freight charges and circulated false reports concerning complainant's financial standing. For all of these alleged wrongs reparation is sought.

At the time when the complaint was filed, and for some 10 years prior thereto, the rates on coal, stated throughout this report in amounts per long ton, in carloads, from the Lehigh and Wyoming regions to Jersey City, published by all carriers, were on prepared sizes \$1.60, pea \$1.45, buckwheat \$1.25, and rice and barley \$1.15. The original hearing upon this complaint was held in December, 1913, but no evidence was introduced bearing upon the reasonableness of the rates assailed because they were embraced in our pending general investigation into the rates, practices, rules, and regulations governing the transportation of anthracite coal, hereinafter called the *Anthracite Case*. After testimony had been taken in support of the allegations of unjust discrimination and undue prejudice the hearing was adjourned in view of the pending investigation and to permit compilation of certain data. Defendant's counsel cross-examined complainant's witnesses, but offered no other evidence. Our conclusions in the *Anthracite Case*, decided July 30, 1915, are

reported in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. In that case defendant was a party respondent and represented by counsel.

A supplemental hearing in the case before us was held in December, 1918. No additional testimony was taken, but it was stipulated that the record in the *Anthracite Case*, to the extent referred to by complainant on brief, should be deemed a part of this case. It was further agreed by the parties that the filing of a statement showing the shipments upon which reparation is claimed should be deferred until after our determination of the issue of reasonableness. Complainant thus relies upon the evidence in the *Anthracite Case* to establish unreasonableness of the rates assailed.

The history of the rates on coal from the Pennsylvania anthracite district to Jersey City and other tidewater ports and interior points is given in some detail in the *Anthracite Case*. We there found that rates from the several coal regions to tidewater points had been based upon certain percentages of the average price at which the coal was sold in the tidewater market of New York harbor. In 1901 the anthracite coal carriers, including defendant, established the fixed or flat rates which were considered by us in the *Anthracite Case*, including the rates here discussed. After an exhaustive study of transportation and other conditions we found, among other things, that the then existing rates of the Lehigh Valley from the Lehigh and Wyoming regions to Jersey City were unreasonable, and prescribed \$1.45 on prepared sizes and \$1.35 on pea and smaller sizes as reasonable maximum rates. They became effective April 1, 1916.

In *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C., 699, we had under consideration the reasonableness of the Delaware, Lackawanna & Western's rates on anthracite coal, in carloads, from points in the Wyoming region to New York lighterage station, N. J., f. o. b. vessels, in effect during the period from April 9, 1910, to March 31, 1916, inclusive. We found these rates unreasonable to the extent that they exceeded \$1.45 on prepared sizes and \$1.35 on smaller sizes, and awarded reparation. The lighterage station named is at Hoboken, N. J., in close proximity to the terminals of defendant at Jersey City.

Defendant on brief stresses the fact that the *Anthracite Case* was a general investigation covering a large number of matters and conditions and that the rates prescribed therein represented increases in the rates assailed on sizes smaller than pea as well as decreases on pea and larger sizes, and urges that under these circumstances reparation should not be awarded to the bases of the rates prescribed. Similar contentions were made in *Plymouth Coal Co. v. P. R. R. Co.*, *supra*, and decided at page 708 of the report in that case.

Since our decision in the *Anthracite Case* we have also awarded reparation to the bases there prescribed on shipments which moved during varying periods from July 3, 1911, to April 1, 1916, date when those rates became effective, from many points in the Lehigh and Wyoming regions to New Jersey tidewater termini of the anthracite-carrying roads. *Markle Co. v. L. V. R. R. Co.*, 57 I. C. C., 375; *Dodson & Co. v. C. R. R. Co. of N. J.*, *ibid.*, 381; *Meeker & Co. v. C. R. R. Co. of N. J.*, *ibid.*, 414; *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, *ibid.*, 432.

We shall consider next the allegations of unjust discrimination, undue prejudice to complainant, and undue preference of certain of complainant's competitors.

The Communipaw Coal Company and its successor, Burns Brothers, also competitors of complainant, during a period commencing prior to 1909 had a retail coal yard at the terminal of the Jersey Central, in Jersey City, and delivered coal to consumers in New York by means of drays which crossed the river on that carrier's ferry. Their coal was shipped over the Jersey Central, which published the following tariff provision:

On consignments transported by Central Railroad of New Jersey to Jersey City and transshipped by dray or wagon in connection with the Central Railroad of New Jersey ferries to foot of Liberty or foot of 23rd Streets, North River, New York, an adjustment of 15 cents per ton will be made to equalize similar shipments moved over Port Liberty, Communipaw, or Port Johnson piers, thence by water.

Particulars as to the movement of coal over the three piers last named are not available.

The record indicates that the Communipaw Coal Company and its successor were the only dealers distributing coal from the Jersey City terminal of the Jersey Central and the only receivers of coal in position to avail themselves of the "adjustment." This adjustment came to the knowledge of Mackey, Young & Company, predecessor of the E. L. Young Coal Company, and a representative of that dealer asked from the coal company a reduction of 15 cents per ton in the price of coal purchased from the latter, which was granted. This arrangement existed for approximately four years. A like concession was made to the Curtis-Blaisdell Company, the only other dealer distributing coal similarly obtained. These dealers used the ferry of the Pennsylvania, with a longer dray haul in Jersey City than their competitors had in using the Jersey Central's ferry. Monthly refunds were made by the coal company on all anthracite sold to these customers and delivered by them in New York City. Complainant learned of these advantages accruing to its competitors and complained to defendant's officials, who took up the matter with

the officials of the Jersey Central. The outcome was cancellation of the Jersey Central's tariff provision effective December 1, 1911. The refunds by the coal company were discontinued at about the same time.

Complainant's treasurer testified that the cost of its coal, delivered at Jersey City, was about 8 cents per ton more than the circular price of the coal company; that he had tried repeatedly but unsuccessfully to buy coal from the coal company for his company; that the coal company had given a variety of reasons for not selling to complainant, usually lack of coal, but sometimes requesting a statement of complainant's financial condition; and that complainant had at times offered the coal company cash for coal, but with no better success.

The former assistant to the general sales agent of the coal company testified that it was the practice of that company to sell at reductions from its circular price when necessary in order to "move" its coal. Particularly was this the case in 1909, when his company was overstocked. He stated that the reductions were in varying amounts, sometimes as much as 50 cents per ton, and were not confined to New York, but were made at various places. He further testified that the reason for declining to sell to complainant on credit was doubt of its ability to pay. He denied that complainant had ever offered cash.

It was testified at the original hearing that complainant was suffering loss of business through competition with the dealers who purchased coal from the coal company. Complainant has since gone into bankruptcy, but to what extent that particular competition was a contributing cause does not appear. Complainant competed for New York City business not only with those dealers but also with the one receiving coal over the Jersey Central under the double advantage of that carrier's "adjustment," as provided in tariffs, and a short dray haul to the ferry. It also competed with two other distributors. The record is silent as to the sources from which one of these secured its coal; the other bought at the mines from independent operators and received no reduction from the tariff rates. No contention is made that the coal company failed to pay the published tariff rates.

It appears that defendant and the coal company had the same president and other principal officers, and in part the same directors; that defendant owned all shares of the capital stock of the coal company except directors' qualifying shares; that between the years 1890 and 1905 defendant advanced to the coal company large amounts of money, \$5,775,000 of which was never repaid but was charged by defendant to profit and loss; and that in 1905 defendant trans-

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ferred to the coal company securities valued at \$10,587,000, representing investments in coal properties, taking in payment the coal company's certificates of indebtedness on which it paid no interest until 1912. The financial relations between defendant and the coal company are discussed at page 245 of our report in the *Anthracite Case*, and recited in detail in the appendix, page 327 *et seq.* The Lehigh Valley Coal Sales Company was organized in 1912, and since March 1 of that year has shipped and marketed all of the coal mined and purchased by the coal company. *Anthracite Case*, p. 225.

Complainant contends that the coal company sold to complainant's competitors at less than the cost of the coal and freight charges, as a result of which complainant was underbid by its competitors; that the substantial financial aid which the coal company received from defendant enabled it to sell at materially lower prices; and that the coal company was merely a department of defendant by reason of stock ownership, and identity of the chief officers and several of the directors. It deduces therefrom that payment of the 15-cent refund by the coal company was equivalent to payment of that amount by defendant and constituted a departure to that extent from the published tariff rates. These practices no longer exist and in view of the conclusions hereinafter reached we deem it unnecessary to decide this question.

Complainant apparently rests its case after showing that the coal company paid the refund to certain of its competitors and that the coal company and defendant were closely related. Without any further proof, it claims to have been damaged to the extent of 15 cents per ton on all coal it delivered in New York City. But complainant also met the competition of dealers who did not purchase from the coal company. One of these had the benefit of the Jersey Central's tariff adjustment and others seem to have paid the tariff rates without any reduction. Complainant must prove that it has suffered actual pecuniary loss as a direct and proximate result of any alleged unjust discrimination or undue prejudice. *Penna. R. R. Co. v. International Coal Co.*, 280 U. S., 184.

The charge of undue preference of complainant's competitors in the matter of extending credit to them for payment of freight bills was withdrawn by complainant's counsel at the supplemental hearing.

Evidence was introduced by complainant with respect to the remaining allegations of the complaint, including those relating to switching services and demurrage charges, but the record does not warrant a finding on these points. Reference was made to the record in the *Anthracite Case*, in which it was developed that no demurrage was charged on cars held at the coal-storage plants used

by the coal company at various points, but there is no showing of similarity in circumstances and conditions, nor is it clear that complainant had in fact paid any demurrage charges. At the time of the supplemental hearing the demurrage charges assessed were the subject of other litigation.

Upon consideration of the record we are of opinion and find that complainant has not proven that the making of refunds to certain of its competitors was the proximate cause of any injury which it may have sustained, and has failed to establish either the fact of that injury or the amount of any resulting damage.

Following our conclusions in the cases cited we are further of opinion and find that the rates assailed were unreasonable to the extent that they exceeded \$1.45 per long ton on prepared sizes and \$1.35 per long ton on smaller sizes; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest, on shipments covered by the complaint and not barred by the statute of limitations. Complainant should comply with rule V of the Rules of Practice.

No. 11004.

CAMERON-HOGG LUMBER COMPANY ET AL

v.

DIRECTOR GENERAL, AS AGENT, PORTLAND RAILWAY,  
LIGHT & POWER COMPANY, ET AL.

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Submitted March 17, 1921. Decided June 9, 1921.

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Rates on lumber and forest products, in carloads, from certain points on the lines of the Portland Railway, Light & Power Company and the Willamette Valley Southern Railway to destinations east of Missoula and Rexford, Mont., and McCammon, Idaho, not found unreasonable, but refusal of defendants to maintain joint rates on the coast-group basis from said points to said destinations while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points in the states of Washington and Oregon on their own branch lines, on their proprietary branch lines, or on their independent connections, found to result in undue prejudice. Undue prejudice ordered removed. Reparation denied.

*Joseph N. Teal, William C. McCulloch, and Rogers MacVeagh* for complainants and intervener.

*R. A. Leiter* for Portland Railway, Light & Power Company and Willamette Valley Southern Railway Company; *John F. Finerty* for Director General, as Agent; and *Charles A. Hart, Ben C. Dey, W. A. Robbins, H. A. Scandrett, and A. C. Spencer* for Director General, as Agent, and defendant carriers other than Portland Railway, Light & Power Company and Willamette Valley Southern Railway Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

Complainants manufacture lumber and forest products at various points in Oregon <sup>1</sup> on the suburban lines of the Portland Railway, Light & Power Company, hereinafter called the Portland Railway, and on the Willamette Valley Southern. By complaint filed November 10, 1919, they allege that the carload rates on lumber and forest products from these points to destinations east of Missoula and Rex-

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<sup>1</sup> Oregon City, Beaver Creek, Mount Angel, Eagle Creek, Deep Creek, Bull Run, Estacada, Boring, Buckner Spur, Mulino, and Casadero.

ford, Mont., and McCammon, Idaho, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, as compared with the rates contemporaneously maintained on similar commodities from other points in what is known as the coast group. We are asked to establish just and reasonable rates for the future and to award reparation on shipments made since November 1, 1917. The Willamette River Lumber Company intervened in support of the complaint.

The originating points are local either to the Bull Run and Cazadero, or Faraday, branches of the Portland Railway, which radiate east and south from Portland for distances of approximately 31 and 38 miles, respectively, or to the Willamette Valley Southern, which extends south from Oregon City to Mount Angel, Oreg., 32 miles. These are standard-gauge electric lines, operating through a heavily timbered and productive agricultural country, and conduct a general freight and passenger business. Their status as common carriers subject to our jurisdiction is unquestioned.

The Portland Railway connects with the main line of the Oregon-Washington Railroad & Navigation Company at Fairview, Oreg., approximately 13 miles east of Portland, and with that line, the Southern Pacific, and the Spokane, Portland & Seattle at East Portland. The latter is controlled jointly by the Northern Pacific and the Great Northern. The Willamette Valley Southern connects with the Southern Pacific at Liberal, Oreg., about 30 miles south of Portland, and with the Oregon City line of the Portland Railway at Oregon City.

The traffic in question moves under combination rates made up of the originating carriers' local rates to their junctions with the trunk lines, ranging prior to June 25, 1918, from 2 to 5 cents per 100 pounds for hauls of from 3 to 33 miles, plus the coast-group rates beyond; whereas within the territory west of the Cascade Mountains, extending from Vancouver, British Columbia, on the north through Washington and Oregon to the California-Oregon state line on the south, including territory adjacent to that served by the Portland Railway and the Willamette Valley Southern, the coast-group rates are applied generally from points on the main trunk lines, on their own branch lines, on proprietary branches of the trunk lines, and in some instances on independent connecting lines. This situation is described in *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 61 I. C. C., 408. The coast-group rates also apply on lumber from East Portland, Chutes, and Milwaukie, points on the Portland Railway within or near Portland; and on other traffic joint class and commodity rates are maintained on the Portland basis from all



stations on the Oregon City branch of the Portland Railway to the destination territory involved.

The issues here presented do not differ in any material respect from those in the case above cited and the record therein was introduced in this proceeding. We there found that the carload rates on lumber and forest products from points on the Washington Western to interstate destinations, which exceeded the coast-group rates by from 3 to 4.5 cents per 100 pounds prior to June 25, 1918, were not intrinsically unreasonable, but that the refusal of defendants to maintain joint rates on the coast-group basis from points on the Washington Western to interstate destinations, while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points in the states of Washington and Oregon on their own branch lines, on their proprietary branch lines, or on their independent connections, resulted in undue prejudice which we ordered removed. In the absence of proof of damage, reparation was denied. See also *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485, and *Whitewater Lumber Co. v. A. C. Ry.*, 61 I. C. C., 563.

The Washington Western is a short line of railroad extending about 11 miles in a southeastern direction from Machias, Wash., where it connects with the Northern Pacific, to Woodruff, Wash., where it connects with the Great Northern and the Chicago, Milwaukee & St. Paul. Like that road, the lines of the Portland Railway and the Willamette Valley Southern are within the coast-group territory; and the service performed in transporting lumber and forest products from points thereon to eastern destinations is no greater, and in some instances is less than that incident to hauls at the coast-group rates from points within this group on other lines.

We find that the rates assailed were not and are not intrinsically unreasonable, but that it was, is, and for the future will be, unduly prejudicial for defendants, in so far as they participate in the transportation, to fail or refuse to maintain joint rates on the coast-group basis on lumber and forest products, in carloads, from points on the suburban lines of the Portland Railway, Light & Power Company and on the Willamette Valley Southern Railway to destinations east of Missoula and Rexford, Mont., and McCammon, Idaho, while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points in the states of Washington and Oregon on their own branch lines, on their proprietary branch lines, or on their independent connections. No damage is shown to have resulted from the undue prejudice, and reparation is denied. An appropriate order will be entered.

**ATTOHISON, Commissioner**, concurring:

In this case, as in *Three Lakes Lumber Co. v. W. W. Ry. Co.*, *supra*, I am of the opinion that the rates complained of have also been shown to be unreasonable, and that reparation should be awarded on that account and because of damage resulting to complainants because of the undue prejudice found to exist.

**HALL, Commissioner**, dissenting:

I concur in the finding of reasonableness but not as to undue prejudice. In cases where we have found undue prejudice to exist in rates, not in themselves unreasonably high for the service, we have consistently left to the carriers their choice of alternative methods of removal. Here they have no real alternative. Rates from all the coast-group points can not well be increased because of the addition to their number of these few stations. But persistence in this method of extending the group, far beyond anything ever contemplated by the carriers in creating the group, will in time lead to a shifting of the center of gravity or weighted average and result in one of two things. The carriers will seek either to break up the group, or to increase the group rates to cover trunk line absorptions of feeder line charges. As intimated in my expression of dissent to *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485, it is unfair to shippers at points already grouped that they should be exposed to payment of higher rates merely because some off-line points seek to share in the group rates when it is not clearly shown that they share in the transportation conditions which lead to the grouping.

If the group rates under compulsion of our forthcoming order, alternative though it be in form, are extended to complainants' shipping points, the defendant trunk lines will collectively receive as their divisions of the joint rates less compensation than they receive from a shipper at Portland for the same service from that junction point. Whether their acceptance of a less compensation for their service from the same point to the same destination will constitute such a violation of section 2 of the interstate commerce act as was condemned in *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455, sustained in *Seaboard Air Line Ry. Co. v. United States*, 254 U. S., 57, need not be discussed here. There is no difference in principle between absorption of a switching charge and division of a joint rate, so far as the shipper is concerned.

The haul of this traffic from the branch lines here considered must be paid for by somebody. The shippers have paid thus far, and we find that they have paid no more than was reasonable. The trunk lines must pay hereafter, but they can only pay out of what

they earn from reasonable charges to the public. In the last analysis what they pay is paid by the shipping public. That means that other shippers, instead of these shippers on the branch lines, will pay for the haul to Portland from the branch-line mills. In this connection it should be borne in mind that the trunk lines have recently made substantial reductions in rates on lumber and its products from the coast. The complaint should be dismissed.

62 I. C. C.

No. 11593.  
WALTER S. DICKEY  
v.  
DIRECTOR GENERAL, AS AGENT.

*Submitted January 10, 1921. Decided June 15, 1921.*

Minimum charge of \$15 per car collected on numerous shipments of clay from Dickey Clay Spur, Mo., to Deepwater, Mo., found unreasonable. Reparation awarded.

*W. D. Wells and J. E. Burke* for complainant.

*John F. Finerty, Alex. M. Bull, and M. G. Roberts* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

*AITCHISON, Commissioner:*

The complainant filed exceptions to the report proposed by the examiner. We have reached conclusions different from those recommended.

Complainant is engaged in the manufacture of clay products at Deepwater, Mo., under the trade name of W. S. Dickey Clay Manufacturing Company. In his complaint, filed June 29, 1920, he alleges that the minimum carload charge of \$15 collected on numerous shipments of clay from Dickey Clay Spur, Mo., to Deepwater, Mo., from June 25, 1918, to February 20, 1919, was unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act, and he asks for reparation.

The shipments, approximately 550 in number, and ranging in weight from 80,000 to 99,800 pounds, were transported in local freight trains of the Kansas City, Clinton & Springfield Railway from clay pits at Dickey Clay Spur to complainant's plant at Deepwater, a distance of 4.5 miles. The movement was regular, and ranged up to eight cars per day. Prior to June 25, 1918, the applicable rate was 1.25 cents per 100 pounds, minimum weight 50,000 pounds. On that date it was increased to 1.5 cents per 100 pounds, minimum 50,000 pounds, subject to a minimum charge of \$15 per car, which applied generally on all traffic with certain exceptions other than clay. Crushed stone and other low-grade heavy-loading commodities, analogous to clay from a transportation standpoint, were

excepted from the minimum carload charge provision. The cars furnished could not be loaded so as to produce revenue equal to the new minimum charge. Prior to the movement of the shipments under consideration, the complainant requested defendant to furnish larger cars or else permit the cars in use to be fitted with side boards. In reply to this request complainant was informed that the physical condition of defendant's road was such that it would not be possible to handle the heavier loads, but that under the circumstances the matter of excepting this traffic from the application of the minimum charge would be taken up with the officials of the United States Railroad Administration. On February 20, 1919, the Director General of Railroads caused to be published a rate of 1.5 cents, minimum 80,000 pounds, not subject to the minimum carload charge. Meanwhile the shipments in issue moved, and complainant now asks reparation in the amount that the charges assessed exceeded those which would have accrued at the rate of 1.5 cents per 100 pounds, based on actual weights.

The contention most earnestly advanced by complainant is that it was unjust and unreasonable to apply the minimum charge when the transporting carrier was unable to handle cars sufficiently loaded to produce the minimum charge. He maintains that the minimum charge is analogous to a minimum carload weight, and decisions of the Commission are cited to the effect that minimum carload weights should not ordinarily exceed the loading capacity of the cars furnished for the traffic. Traffic officials of the United States Railroad Administration testified that at the time of the issuance of general order No. 28 it was their opinion that rates on short-haul traffic were generally too low, and that \$15 was a reasonable minimum charge for any line-haul movement. Defendant contends that the subsequent exception of complainant's traffic was a concession affording no basis for an award of reparation. The record shows in detail the manner of handling this traffic, which included a line-haul movement of both empty and loaded cars and switching at the plant and at the clay pit. Evidence was introduced by defendant tending to show that the cost of the service exceeded the \$15 charge. Analysis of these cost figures indicates that as estimates they can not be definitely relied upon.

Weight should be given to the fact that the commodity was of low grade, and that the movements were regular and for a short distance. While the establishment of the minimum charge did not contemplate that a carrier should furnish equipment which would enable a shipper to load heavily enough to produce the minimum charge at the rate otherwise applicable, it appears here that this could have been done but for the condition of defendant's road.

We find the charges assessed were unreasonable to the extent that they exceeded those which would have accrued at the rate of 1.5 cents per 100 pounds, based on the actual weights of the shipments. We further find that the complainant made the shipments as described and paid and bore the charges thereon, and that he was damaged thereby and is entitled to reparation in the amount of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable, with interest. Complainant should comply with rule V of the Rules of Practice.

62 I. C. C.

No. 10704.

## TIDE WATER OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CENTRAL RAILROAD  
COMPANY OF NEW JERSEY, ET AL.

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Submitted January 6, 1921. Decided June 14, 1921.

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Upon reconsideration conclusions reached in 58 I. C. C., 92, affirmed. Complaint dismissed.

*Frank M. Swacker* for complainant and East Jersey Railroad & Terminal Company.

*Charles E. Miller* for defendants except East Jersey Railroad & Terminal Company.

## REPORT OF THE COMMISSION ON ARGUMENT.

McCHORD, *Commissioner*:

In our original report in this case, 58 I. C. C., 92, we found that the practice of the Central Railroad Company of New Jersey in refusing to absorb the switching charges of the East Jersey Railroad & Terminal Company on certain interstate traffic originating at or destined to Bayonne, N. J., when shipped by or consigned to complainant's industry, while absorbing such charges on like traffic when shipped by or consigned to certain independent industries served by the East Jersey, was not shown to have been or to be unjustly discriminatory or unduly prejudicial. Upon petition of complainant the case was reopened for argument which has now been had.

The case was tried chiefly on the issues of unjust discrimination and undue prejudice against complainant in the absorption practices of the Jersey Central. Complainant contends that the fourth section of the act is also involved, but no sufficient evidence was offered upon which to base a finding of a violation of that section.

The facts are substantially as stated in the original report and need not be repeated here in detail. The argument, however, developed the fact that the arrangement to use the present interchange tracks was made by the Jersey Central with representatives of the East Jersey and not with complainant as indicated in the former decision. Nevertheless, it appears that the present method of delivery is better suited to the changed conditions in complainant's plant than the former practice. The record shows that because of the increase of traffic and expansion of business the tracks of com-

plainant formerly used for placement by the Jersey Central were frequently inadequate to accommodate the cars; that a number of tracks had been constructed by complainant within its plant which connected only with the East Jersey; and that the movement of East Jersey engines on and across the Jersey Central tracks and in the yard of complainant interfered with the Jersey Central's making delivery. No return to the former method of handling the traffic is here sought by complainant and it is apparent that if restored it would be unsuited to complainant's needs.

As stated in the original report, there is no competition between complainant and the independent industries on outbound manufactured products or on inbound supplies, except that such materials as cooperage and coal may originate in the same markets. Ordinarily undue prejudice does not exist in the absence of competition. *Consumers Co. v. C. & N. W. Ry. Co.*, 36 I. C. C., 259, 261; *City Ice & Supply Co. v. C. & N. W. Ry. Co.*, 36 I. C. C., 514, 517. The facts of record do not disclose a case of undue prejudice.

While the absence of competition does not prevent a finding of unjust discrimination under section 2, to sustain such a finding it must appear that the transportation services are like and contemporaneous and are performed under substantially similar circumstances and conditions, and that the property transported is like traffic. But it is the line haul to which section 2 primarily relates, and if the movement is either over a different line or, if over the same line, for a substantially different haul, the transportation service is substantially dissimilar. *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455, 466; *Wight v. U. S.*, 167 U. S., 512.

The record contains no evidence as to the similarity of the line-haul transportation performed on traffic consigned to complainant on the one hand and the independent industries on the other. It does show that they both receive coal and cooperage material, but the former is handled under joint rates, which include delivery to complainant and the independent industries alike. It also appears that at least a portion of the cooperage material moves under the joint rates which include lighterage as to which complainant and the independent industries are on an equal footing. But no definite evidence was adduced to show that like traffic is actually handled for both complainant and the other industries on the rates to and from Bayonne proper, which alone are here under attack.

It is, of course, clear that the mere fact of financial or corporate relationship between an industry and a common-carrier industrial railroad does not alone justify a trunk line in according the controlling industry less favorable treatment than that given independent industries served by the industrial railroad.



Upon a further consideration of the facts of record we are of opinion and find that the practices complained of have not been shown to be unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise in violation of the interstate commerce act. The complaint will be dismissed.

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No. 11837.

BOSTON WOOL TRADE ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

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*Submitted April 4, 1921. Decided June 15, 1921.*

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On complaint praying for the establishment of additional through routes for the transportation of wool and mohair from points on the Atchison, Topeka & Santa Fe Railway and certain of its connections to Boston, Mass., and other eastern points; *Held*, That the existing through routes are reasonable and adequate. Complaint dismissed.

*H. A. Davis* for complainant.

*F. E. Andrews* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATCHISON.

ATCHISON, *Commissioner*:

The Boston Wool Trade Association, on behalf of its members, brings a complaint against the Atchison, Topeka & Santa Fe Railway Company, sole defendant, and attacks the routing restrictions imposed by that carrier on shipments of wool and mohair in carloads from points on its lines in New Mexico, Texas, Arizona, Nevada, and California, and from points on the lines of certain short-line connections in New Mexico and California, to Boston, Mass., and other eastern points. The wool association asks for an order requiring the defendant to apply the present joint rates, which are applicable only via Chicago and other Illinois junctions, by way of El Paso, Tex., St. Louis, Mo., Memphis, Tenn., New Orleans, La., and Denver, Colo., in connection with various unnamed carriers. The complaint alleges violations of sections 1 and 3 of the interstate commerce act.

Defendant's schedule naming joint rates on wool and mohair provides that to points east of the Indiana-Illinois state line the rates shall apply only via the Chicago and Peoria gateways. The admitted purpose of this restriction is to insure to the Santa Fe its long haul.

62 I. C. C.

The schedule also provides that the rates named will be applicable if for convenience of carriers parties thereto, or through their error shipments are forwarded through other junction points over the rails of participating carriers. Under the latter provision the Santa Fe may divert traffic to other lines if conditions are such as to require it; but the consignees or consignors do not enjoy this privilege except upon the payment of higher combination rates. The complaint seeks for the shippers a diversity of routes in order to expedite the movement of wool when they believe more prompt service would be accorded by other lines or through other junctions.

Until early in 1920 no complaint arose against the service offered by the Santa Fe and its connections through the Illinois junctions. In April, 1920, labor difficulties in Chicago, Kansas City, and elsewhere, and possibly other causes, resulted in a serious congestion of traffic, which continued for a considerable time. The movement of all classes of traffic was delayed, and heavy financial losses to shippers resulted in many cases. The situation became so acute that on May 20, 1920, we issued our service order No. 1, whereby we directed carriers to forward traffic to destinations by the routes most available to expedite the movement thereof, without regard to the routing instructions of the shippers or carriers. Subsequently and progressively the emergency conditions became measurably relieved, and the order was finally vacated, effective December 31, 1920.

It is unnecessary to recite the efforts made by complainant and defendant to expedite the movement of shipments of wool during February, March, April, and May, 1920. In complainant's opinion much of the delay and consequent loss to the shippers could have been prevented if more through routes had been available, and to avoid a recurrence of similar delays complainant brings this request for additional through routes.

The Santa Fe, through its Illinois junctions, offers the shortest route to Boston from the points in New Mexico and Arizona at which the shipments in question originate, and affords as prompt service under normal conditions as can be obtained over any route. Under such circumstances, and in the absence of undue prejudice, that carrier can not be required to surrender the traffic to connections at junctions which afford it hauls substantially less than the length of its railroad.

The only showing as to undue prejudice is that the Santa Fe publishes or concurs in other schedules which do not restrict the routes in such manner as always to afford that carrier its long haul. Thus wool may move from stations on the Santa Fe in Oklahoma and Texas to points east of the Indiana-Illinois state line via Missouri River as well as by the Illinois junctions, and from competitive points in California via all junctions. If the movement of wool

from points in Oklahoma, Texas, and California to Boston during the emergency conditions in 1920 was accomplished with less delay because of the diversity of routes accorded shippers, this record does not show it; and the mere fact that it was possible to route the traffic through junctions west of Illinois is not proof that complainant was or is subjected to undue prejudice because similar routings were not authorized on shipments from local stations in New Mexico and Arizona on the Santa Fe and its short-line connections.

That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the interstate commerce act. We are now authorized in appropriate cases to establish temporary through routes, either upon the application of shippers or upon our own initiative, without complaint and without the delays incident to formal hearing.

We find that the existing through routes for the movement of wool and mohair from points on the Santa Fe and its short-line connections to Boston and other eastern points are reasonable and adequate, and will dismiss the complaint.

62 I. C. C.

No. 10978.

LEHIGH PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST LINE  
RAILROAD COMPANY, ET AL.

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*Submitted October 13, 1920. Decided June 15, 1921.*

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Defendants' refusal to perform the service of switching and spotting cars at complainant's plant beyond the present points of interchange, or to compensate complainant for the performance of such service found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*F. E. Paulson, W. F. Clark, and E. S. Gubernator* for complainant.  
*W. S. Bronson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

*AITCHISON, Commissioner:*

This case was made the subject of a proposed report. Exceptions thereto were filed by complainant, and the matter was argued orally.

Complainant is a corporation engaged in the manufacture and sale of portland cement at Fordwick, Va. It alleges that defendants' refusal to switch and spot cars moving to and from its plant, or to make an allowance for the performance by it of this service, while furnishing like and contemporaneous services without charge at plants of its competitors, was and is unreasonable, unjustly discriminatory, and unduly prejudicial. Complainant asks reparation and seeks an order requiring defendants either to perform the switching and spotting service, or to compensate it for the performance thereof.

Fordwick is a local station on the Chesapeake & Ohio Railway. Complainant's plant was built about 20 years ago by the Virginia Portland Cement Company, which constructed a system of tracks extending from a point of connection with the Chesapeake & Ohio to the various points of loading and unloading within the plant, and included a spur nearly a mile in length to a shale quarry. The Virginia Portland Cement Company in 1901 caused the incorporation of the Virginia Portland Railway Company, whose stock it owned and to which it turned over the tracks and equipment. There was

no written lease, but there was an understanding that any profits or earnings of the railway company in excess of expenditures would be paid to the cement company. In December, 1915, complainant purchased the stock of the Virginia Portland Cement Company, but continued the operation of the plant under the name of the old company until April 9, 1919, when the Virginia Portland Cement Company was dissolved. Since that date the plant has been operated in complainant's name. Complainant also abandoned the separate railway organization, and itself took over the operation of the plant railway, but the exact date of this change does not appear.

In *Virginia Portland Ry. Co.*, 49 I. C. C., 332, one of the reports in the *Second Industrial Railways Case*, the status of the Virginia Portland Railway Company, and the lawfulness of allowances to that company by the Chesapeake & Ohio were considered. That report describes in detail the plant tracks and the method of handling the traffic.

Complainant operates 2.96 miles of standard-gauge track in and about its plant. At the hearing in *Virginia Portland Ry. Co.*, *supra*, the mileage was stated to be 4.7 miles. In explanation of this discrepancy complainant produced testimony in the present case to the effect that questions had arisen as to the ownership and maintenance of some of the tracks, and that by an agreement dated January 22, 1918, certain tracks were turned over to the Chesapeake & Ohio. The tracks now operated by complainant are, with the exception of the line to the shale quarry, either storage tracks or spurs leading to points of loading and unloading. These tracks connect with a system of interchange tracks now owned and operated by the Chesapeake & Ohio. Complainant owns two locomotives and nine cars. The cars are used exclusively in the shale service.

Complainant's outbound traffic consists almost entirely of cement. During the 25 months ending with November, 1919, the monthly average number of loaded cars outbound was 271. The average monthly inbound movement during the same period was: Coal, 111 cars; gypsum, 10 cars; miscellaneous, 2.7 cars. Inbound empty box cars are placed by the Chesapeake & Ohio on storage tracks owned by complainant. The Chesapeake & Ohio then inspects them. Cars unfit for loading are returned to the interchange tracks; those in condition to be loaded are taken to the loading points. In either case the movement from the storage tracks is performed by complainant, though in so doing its engines must necessarily operate over the interchange tracks of the Chesapeake & Ohio. Inbound loaded cars are placed by the Chesapeake & Ohio on the interchange tracks, from which they are switched to the points of unloading by complainant's power. There are five separate unloading points for coal,

as many different loading points for cement, and a number of other unloading points for miscellaneous supplies. Outbound loaded and empty cars are switched by complainant from the points of loading and unloading to the interchange tracks. The Chesapeake & Ohio spots no cars at complainant's plant, although the sack house and bag house are reached only by that carrier's rails. The intraplant movement of materials is by means of mechanical conveyors. Stone is brought from a quarry about one-half mile west of the plant by a narrow-gauge railroad. Complainant's operations require the services of one standard switching engine, working from 11 to 12 hours daily, of which time nearly 95 per cent is consumed in switching cars between points of loading and unloading and the interchange tracks, and the other 5 per cent is occupied in the shale service. An exhibit introduced by complainant shows the average cost of the switching and spotting service performed by it for the 25 months ending with November, 1919, as \$2.53 per car. Defendants do not dispute this figure, and state that the cost to the Chesapeake & Ohio of performing the same service would be considerably higher.

From October 1, 1906, to April 1, 1914, the Chesapeake & Ohio made an allowance of \$3 per loaded car to the Virginia Portland Railway Company for the switching service performed by the latter. This tariff was canceled, effective April 1, 1914, following our report in the original *Industrial Railways Case*, 29 I. C. C., 212, and no allowance has since been made. When the allowance was withdrawn the Virginia Portland Cement Company made a demand upon the Chesapeake to perform the spotting service, and a similar demand was made by complainant on June 24, 1919. In *Virginia Portland Ry. Co., supra*, we found that company to be a private facility of the Virginia Portland Cement Company and not a common carrier, and held:

\* \* \* that the placing of cars on the tracks within the plant inclosure designated by the industry or its industrial railroad constitutes delivery at the industry by the Chesapeake & Ohio under its line-haul rate; and that any allowance by the Chesapeake & Ohio to the Virginia Portland Railway Company for the service of spotting the cars after the first placement will be unlawful.

Complainant, in the instant case, takes exception to these findings, and contends that the points of interchange are not "within the plant inclosure" and were not "designated by the industry." As above indicated, interchange of inbound empties is made on storage tracks owned by complainant, all other interchange being made on tracks owned by the Chesapeake, but all tracks so used are on land belonging to complainant. There is no fence about the plant, and no natural or artificial boundary separates the land on which the interchange tracks are located from that on which the plant buildings

stand. Complainant contends that the present points of interchange were designated by the Chesapeake at the time the former allowance was discontinued in 1914. This contention is based, not upon personal knowledge of the transaction by any witness, but upon correspondence in the files of the Virginia Portland Cement Company. It does not appear of record that any change was made at that time or has since been made in the points of interchange or the method of handling the traffic, although, as already shown, the ownership of some of the interchange tracks has passed from complainant to the Chesapeake & Ohio. The service as now performed by complainant is suited to its needs. If the Chesapeake & Ohio were to undertake the spotting service the present methods would probably be adhered to, and as complainant can do the work more cheaply than can defendant, an order requiring the Chesapeake to extend its transportation service to the several loading and unloading points would doubtless result in the retention of the present manner of handling the traffic and in the payment of an allowance to complainant.

Complainant contends that the line-haul rates to and from Fordwick formerly included the cost of spotting cars at the plant; that the effect of the cancellation of the allowance was an increase in rates which defendants have failed to justify; and that the Fordwick rates are unreasonable to the extent of the cost to complainant of performing the spotting service, which it estimates at 0.75 cent per 100 pounds. On the other hand the freight traffic manager of the Chesapeake & Ohio testified that the Fordwick rates were fixed without any regard to the terminal service, and that when the plant was established his company at first refused to make an allowance to the cement company, but after the incorporation of the Virginia Portland Railway Company granted an allowance to it, and that this allowance was canceled because of our findings in the *Industrial Railways Case, supra*.

Complainant cites instances in which the Chesapeake & Ohio performs the service of spotting cars on private sidings. Evidently in such instances the tracks on which the spotting is performed are either owned or controlled by the Chesapeake & Ohio and the carrier contends that in no instance does it perform the service of spotting cars on industrial tracks controlled by the industry, or make an allowance to the industry to cover the cost of such service. It appears that there are no cement-manufacturing plants other than that of complainant which are served directly by the defendant.

In support of the allegation of unjust discrimination in violation of section 2 of the act, complainant showed that the Chesapeake & Ohio participates in joint rates on cement to points on its line from points on the lines of other railroads where complainant's com-

petitors received a spotting service at the line-haul rate. None of these competing cement-manufacturing plants, which are situated in Pennsylvania, Maryland, and Tennessee, are located on the lines of the Chesapeake & Ohio. Section 2 may be dismissed from consideration, as there is here no discrimination between shippers in the same community. *Richmond Chamber of Commerce v. S. A. L Ry.*, 44 I. C. C., 455, 464. The fact that complainant's competitors receive spotting service without charge in addition to the line-haul rate while complainant is not given such a service, does not establish undue prejudice under section 3. It might well be that rates to and from the competitive points included a charge for the spotting service, while it is of record that the Fordwick rates were not so constructed.

Complainant introduced exhibits showing rates, ton-mile earnings, and car-mile earnings on cement from the Lehigh district of Pennsylvania, Universal, Pa., Security and Union Bridge, Md., and Kingsport, Tenn., to points on or reached via the Chesapeake & Ohio, and comparing them with rates and earnings from Fordwick to the same destinations. In many instances the ton-mile and car-mile earnings from Fordwick are higher than from the competitive points to the same destinations. The force of these comparisons is impaired by the fact that the distances are generally much less from Fordwick than from the competitive points. For comparable distances the ton-mile and car-mile earnings under the rates from Fordwick are, in a majority of instances, lower than under rates from the competitive points. These exhibits fail to support the contention that the rates from Fordwick, plus the cost of performing the spotting service, are unduly high as compared with rates from the competitive plants where the rates include the spotting service.

Complainant relies upon *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537. There the carriers had originally performed the switching and spotting services at complainant's plant at Sharon, Pa. Later they paid complainant for the performance of these services. Following the original *Industrial Railways Case*, *supra*, the allowance was discontinued for a time, but was later restored. It had been the practice of the carriers at Sharon and in the surrounding iron and steel industrial region to perform the services of spotting cars at convenient places within the enclosures of practically all iron and steel manufacturing plants not operating private engines, without charge in addition to the line-haul rates, and to absorb out of such rates the charges of separately incorporated railroads for interchange switching. During the reparation period the carriers had performed similar services at line-haul rates for complainant's competitors at Sharon. We found that defendants' failure to pay an allowance had resulted in the exaction of



unreasonable transportation charges and that defendants had subjected complainant to undue prejudice, and awarded reparation.

The facts in the instant case distinguish it from the *National Malleable Castings Co. Case*. The Chesapeake & Ohio never performed the spotting service at complainant's plant, and the rates to and from Fordwick were not originally constructed to include the performance of that service by the Chesapeake & Ohio. In *Virginia Portland Railway Co., supra*, we held that the allowance subsequently made to the incorporated industrial railway was an unlawful concession from the Fordwick rates rather than a payment for a service included in those rates. There appears to be no general practice on the part of the carriers in this territory to perform or pay for the switching and spotting services at plants similar to that of complainant. None of the complainant's competitors are located at Fordwick, and, as has been pointed out, complainant has not shown that it is prejudiced by the fact that some of its competitors located at other and distant points are given spotting service without charge in addition to the line-haul rates.

Apart from any elements of discrimination, complainant contends that defendant should perform or pay for the performance of the spotting service as a part of its duty of delivery. In *United States Cast Iron P. & F. Co. v. Director General*, 57 I. C. C., 677, 683, which was followed in this respect in *Carey Mfg. Co. v. Director General*, 59 I. C. C., 640, 643, we said:

\* \* \* However, in testing the extent of the carrier's legal obligation as to the delivery of carload freight, two circumstances are entitled to primary consideration. One is the extent of the service involved in a typical team-track delivery; the other, the extent of the service rendered in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery.

Wherever a particular delivery service—spotting at some place of unloading within a plant—properly may be construed as the equivalent of either of these two services, and the rendition of such service practical, we may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude of the service becomes greater than the equivalent of team-track delivery or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates.

Applying the tests there mentioned to the facts of record we are of opinion that the present method of making delivery at complainant's plant is not unreasonable.

We find that defendants' refusal to perform the service of switching and spotting cars in complainant's plant beyond the present points of interchange or to compensate complainant for the performance of this service, is not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

No. 10614.

## GRAND RAPIDS PLASTER COMPANY

v.

DIRECTOR GENERAL, ANN ARBOR RAILROAD  
COMPANY, ET AL.

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*Submitted April 6, 1921. Decided June 14, 1921.*

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Readjustment of rates on plaster and gypsum products, in carloads, from Fort Dodge, Gypsum, and Mineral City, Iowa, and Grand Rapids, Mich., to certain territory in Wisconsin, Michigan, and Minnesota, proposed by defendants in conformity with our previous report, 57 I. C. C., 264, disapproved; reasonable and nonprejudicial adjustment from Grand Rapids prescribed.

*Ernest L. Ewing* for complainant.

*James H. Campbell, E. M. Davis, and J. N. Davis* for defendants.

*L. M. O'Leary, Francis B. James, E. E. Williamson, Ewing H. Scott, and Frederick Schwertner* for Fort Dodge Commercial Club and Plymouth Gypsum Company; and *F. S. Keiser* for Commercial Club of Duluth, Minn., interveners.

## REPORT OF THE COMMISSION ON FURTHER HEARING.

*EASTMAN, Commissioner:*

In *Grand Rapids Plaster Co. v. Director General*, 57 I. C. C., 264, we found that the rates on plaster and gypsum products, in carloads, from Grand Rapids, Mich., Fort Dodge, Iowa, and points grouped therewith, to points in Wisconsin north of an east-and-west line from Sheboygan to Prairie du Chien and to points in the upper peninsula of Michigan and in the extreme eastern part of Minnesota were unduly preferential of Fort Dodge and points grouped therewith, and unduly prejudicial to Grand Rapids. Defendants were directed to publish rates relatively no higher, distance considered, from Grand Rapids than from Fort Dodge and to accord to Grand Rapids and Fort Dodge the same treatment with respect to minimum carload weights.

The propriety of an adjustment proposed by defendants pursuant to these findings is here in issue. Following submission of the proposed adjustment a further hearing was had. The Fort Dodge Commercial Club and the Plymouth Gypsum Company of Fort Dodge, Iowa, intervened and, in general, support complainant's contentions. The Commercial Club of Duluth, Minn., intervened in opposition to any widening of the spread between the rates from Fort Dodge to

62 I. C. C.

Minneapolis, Minn., and to Duluth. Exceptions were filed to the examiner's report and our conclusions differ from those suggested by him. Rates throughout this report are stated in cents per 100 pounds, and for convenience those in effect prior to the general increases authorized by us on July 29, 1920, will be referred to as the present rates. These general increases were not included in the carriers' proposed rates.

The present rates on plaster and gypsum products, minimum 40,000 pounds, those proposed by defendants, and the short-line distances from Grand Rapids and Fort Dodge to 50 points, selected by defendants as being representative of the entire destination territory, are shown in the following table. The rates named from Fort Dodge apply also from the near-by points of Gypsum and Mineral City, Iowa.

To—	From Fort Dodge.			From Grand Rapids.		
	Short-line distance.	Present rate.	Proposed rate.	Short-line distance.	Present rate.	Proposed rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Red Wing, Minn.....	205	12	12	402	20.5	21
Winona, Minn.....	210	12	12	344	19.5	19
St. Paul, Minn.....	211	12	12	433	20.5	21
La Crosse, Wis.....	221	12	12	315	19.5	19
Stillwater, Minn.....	225	14.5	14.5	414	20.5	21
New Richmond, Wis.....	236	16	17	432	20.5	21
Turtle Lake, Wis.....	246	16	17	427	20.5	21
Valley Junction, Wis.....	268	17	17	274	18.5	18
Elroy, Wis.....	290	17	18	273	18.5	18
Eau Claire, Wis.....	283	16	18	354	18.5	20
Winckley, Minn.....	287	16.5	18	509	20.5	22
Fairchild, Wis.....	288	17	18	340	20.5	19
Chippewa Falls, Wis.....	297	16	18	376	18.5	20
Grand Rapids, Wis.....	308	17	18	278	18.5	18
Spooner, Wis.....	310	16.5	18	436	20.5	21
Marshfield, Wis.....	313	17	18	305	18.5	18
Portage, Wis.....	323	15	19	211	14	15
Stevens Point, Wis.....	328	17	19	271	16.5	18
Ladysmith, Wis.....	336	20	19	373	20.5	20
Wausau, Wis.....	350	19	19	296	18.5	18
Superior, Wis.....	357	16.5	20	446	20.5	22
Duluth, Minn.....	361	16.5	20	490	20.5	22
New London, Wis.....	364	17	20	229	16.5	17
Frederic, Wis.....	377	20	20	370	20.5	20
Clintonville, Wis.....	380	19	20	345	17.5	17
Ripon, Wis.....	383	15	20	203	13.5	14
Appleton, Wis.....	384	16	20	209	13.5	14
Fond du Lac, Wis.....	386	15	20	180	13.5	13.5
Tomahawk, Wis.....	392	20	20	357	20.5	20
Antigo, Wis.....	393	20	20	205	20.5	15
Ashland, Wis.....	394	16.5	20	453	20.5	22
Green Bay, Wis.....	403	17	20	203	12	13
Park Falls, Wis.....	407	21	21	400	20	20
Rhineland, Wis.....	414	20	21	337	20.5	19
Bessemer, Wis.....	425	22	21	410	20.5	21
Manitowoc, Wis.....	426	16	20	166	10.5	10.5
Oconto, Wis.....	432	19.5	21	232	11.5	13
Kewaunee, Wis.....	440	17	21	203	10.5	10.5
Marquette, Wis.....	452	20	22	223	10.5	10.5
Menominee, Mich.....	454	20	22	223	10.5	10.5
Pembina, Wis.....	458	20	22	311	13	19
Sidnaw, Mich.....	495	22	22	396	20.5	20
Iron Mountain, Mich.....	497	23	22	325	16.5	19
Escanaba, Mich.....	518	20	23	318	19	19
Michiganville, Mich.....	526	23	23	405	19	20
Marquette, Mich.....	564	( <sup>1</sup> )	23	394	18.5	20
Houghton, Mich.....	567	22	23	425	20.5	21
Manistique, Mich.....	599	20	23	243	12	13
Munising, Mich.....	681	( <sup>1</sup> )	23	346	19	19
Sault Ste. Marie, Mich.....	677	20	24	323	16	19

<sup>1</sup> No through rate published.

The proposed rates result from the application of a distance scale beginning with 17 cents for 250 to 270 miles and progressing 1 cent for mileage blocks or groups of 40, 40, 50, 50, 60, 90, and 100 miles. The present rates from Grand Rapids and Fort Dodge are not graded according to distance and a scale providing equal rates to comparatively large groups of destinations was considered preferable to one composed of smaller blocks or groups. The rate with which the scale begins was fixed at 17 cents to avoid reducing the rates from Fort Dodge to many points. The application of the scale was confined to distances of 250 miles or more, since comparatively few of the destinations in issue are less than that distance from Fort Dodge, and it was assumed that within the 250-mile zones tributary to Fort Dodge and Grand Rapids, respectively, these points could not reasonably expect to compete with each other on account of the disparity in distance.

Defendants explain that the proposed rates were determined on the theory that a readjustment which equalized rates to competitive points, distances considered, and substantially maintained the present level of rates from Grand Rapids would comply with the requirements of our decision. Except to certain destinations, principally west-bank Lake Michigan ports and near-by points, 117 to 250 miles from Grand Rapids, to which rates of 10.5 to 14 cents apply, the present rates from Grand Rapids are blanketed in three groups. A 16.5-cent rate applies to a few points, 229 to 325 miles; an 18.5-cent rate to numerous points, 273 to 384 miles; and a 20.5-cent rate to most other destinations, including St. Paul and Duluth, 433 and 490 miles, respectively, from Grand Rapids.

From Fort Dodge the present rates based on a minimum of 40,000 pounds are grouped substantially as follows: 12 cents to Mississippi River points, 205 to 230 miles; 14.5 to 16.5 cents to points in Wisconsin east of and including Ashland, Spooner, Eau Claire, Chippewa Falls, Arcadia, and Sparta, 230 to 400 miles; 17 cents to practically all points east thereof and south of a line from Sturgeon Bay, Wis., to Chippewa Falls through Green Bay and Marshfield, 238 to 463 miles; 20 cents to a large section north of that line south of and including Mellen, Wis., Rhinelander, Escanaba, and Sault Ste. Marie, 339 to 694 miles; and 21 or 22 cents to most other points affected for distances ranging from 391 to 588 miles. To St. Paul, Duluth, Ashland, Hancock, Mich., and points grouped therewith, lower alternative rates apply from Fort Dodge based on a minimum of 60,000 pounds. All rates from Grand Rapids are subject to a minimum of 40,000 pounds.

Of the 50 destinations named in the preceding table, 15 would have lower, 9 the same, and 26 higher rates from Grand Rapids

under defendants' proposed adjustment than now apply; rates from Fort Dodge would be increased to 33, would remain the same to 13, and would be reduced to 2 destinations. The proposed rates from Grand Rapids are lower than from Fort Dodge to 27 destinations, higher to 17, and the same to 6. This apparent advantage to Grand Rapids results from the fact that it is nearer to most of the destinations than is Fort Dodge.

Complainant objects to the proposed adjustment on the ground that no provision is made for distances less than 250 miles. It points out that of approximately 181 prospective plaster-consuming points in the destination territory, 81 are within 250 miles from Grand Rapids and only 18 within 250 miles from Fort Dodge. The following comparison of the proposed rates from Grand Rapids and Fort Dodge to representative points within 250 miles from Grand Rapids indicates that the rates from Fort Dodge would be higher in every instance, although not relatively higher.

To—	From Grand Rapids.		From Fort Dodge.	
	Distance.	Rate.	Distance.	Rate.
	Miles.	Cents.	Miles.	Cents.
New London, Wis. ....	229	17	364	20
Clintonville, Wis. ....	245	17	380	20
Manitowoc, Wis. ....	166	10.5	426	21
Kewaunee, Wis. ....	203	10.5	440	21
Green Bay, Wis. ....	203	13	403	21
Appleton, Wis. ....	209	14	384	21

Under the proposed rates shippers from Fort Dodge would be at a disadvantage of at least 3 cents per 100 pounds, or 60 cents per ton, to every important destination less than 250 miles from Grand Rapids. Likewise, to destinations less than 250 miles from Fort Dodge shippers from Grand Rapids are, and under the proposed adjustment would continue to be, at a similar disadvantage. According to the evidence for complainant, 50 cents per ton is the present maximum difference in rates absorbed by it in competition with other plaster-producing points, although absorptions up to \$1 per ton or more have been made. The territory within 250 miles from Fort Dodge includes the important plaster consuming and jobbing points of Minneapolis and St. Paul, from which complainant is now barred by its disadvantage in rates. The rate from Fort Dodge to these points would not be affected by the proposed adjustment, whereas the rate from Grand Rapids would be increased 0.5 cent. Complainant states that any adjustment to St. Paul and Minneapolis which results in a differential of more than 2.5 cents per 100 pounds in favor of Fort Dodge would not be acceptable.

Defendants admit that the proposed rates average somewhat higher than the present rates, but point out that increases are proposed principally from Fort Dodge, from which point the present rates are generally lower than from Grand Rapids. The present rates from Grand Rapids to the 50 representative destinations named by defendants average 17.73 cents, the proposed rates 18.07 cents, an increase of approximately 1.9 per cent. The present rates from Fort Dodge to the same destinations average 17.66 cents, the proposed rates 19.45 cents, an increase of 10.2 per cent.

Complainant also submitted a scale of distance rates and asks that it be adopted in lieu of the adjustment proposed by the carriers. In preparing its scale, complainant compiled present rates and distances from Grand Rapids and Fort Dodge to 181 cities of 1,000 or more population in Wisconsin, eastern Minnesota, and the upper peninsula of Michigan. These points were assembled in 10-mile blocks or groups according to distance, and the distances and present rates to each group were averaged. The averages from Grand Rapids and Fort Dodge were separately determined and then combined. The scale proposed by complainant begins with a rate of 10.5 cents for 110 miles and is contrasted below with the rates proposed by defendants:

Distances.	Defendants' proposed rates.	Complainant's proposed rates.	Distances.	Defendants' proposed rates.	Complainant's proposed rates.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
From 110 miles to 120 miles .....		10.5	From 311 miles to 350 miles .....	19	17
From 121 miles to 140 miles .....		12	From 351 miles to 400 miles .....	20	18
From 141 miles to 170 miles .....		12.5	From 401 miles to 450 miles .....	21	19.5
From 171 miles to 240 miles .....		13.5	From 451 miles to 510 miles .....	22	20.5
From 241 miles to 250 miles .....		14.5	From 511 miles to 580 miles .....	23	21
From 251 miles to 270 miles .....	17	15.5	From 581 miles to 600 miles .....	23	22
From 271 miles to 310 miles .....	18	17	From 601 miles to 700 miles .....	24	22

Complainant states that in order to make a consistent scale numerous destinations in southern Wisconsin were included, the rates to which points were considered in *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.*, 41 I. C. C., 1. Defendants show that if these destinations were eliminated the resulting scale would more nearly approximate that which they submit. Aside from the inclusion of such points, the differences between the two scales result from the fact that complainant's scale is an average of present rates from Fort Dodge and Grand Rapids, while that of defendants provides rates from both points averaging slightly higher than the present rates from Grand Rapids.

Defendants compare the car-mile and ton-mile earnings on plaster under the proposed rates from Fort Dodge to the 50 representative

destinations mentioned with those on lumber and paper between the same points in the opposite direction and with earnings under the scale-II rates on cement for equal distances prescribed in *Western Cement Rates*, 48 I. C. C., 201; 52 I. C. C., 225, increased 2 cents pursuant to general order No. 28 of the Director General of Railroads. These comparisons show that in general the proposed rates on plaster would yield materially lower earnings per car-mile than those on lumber and paper and lower earnings per ton-mile in many instances; and that the earnings per car-mile would be lower than those on cement, assuming average loads of approximately 47,000 pounds for plaster and 74,000 pounds for cement. This average load for plaster is reckoned from 384 shipments destined to points in Wisconsin in May, 1917, 1918, and 1920, not including shipments that were subject to a minimum of 60,000 pounds. It is stated for the Duluth intervener that the average weight of shipments from Fort Dodge to Duluth exceeds 81,000 pounds and for complainant that the weight of practically all shipments from Grand Rapids to Milwaukee is 60,000 pounds or more. An average loading of 30 tons for cement was assumed in *Western Cement Rates*, *supra*.

The following is representative of comparisons submitted by interveners of present rates on plaster from and to various points, with rates under the proposed scale from Fort Dodge for similar distances:

From—	To—	Distance.	Present rate.	Rate compared.
		Miles.	Cents.	Cents.
Laramie, Wyo.....	Omaha, Nebr.....	563	17	23
Do.....	St. Paul, Minn.....	808	20	26
Piedmont, S. Dak.....	Fort Dodge, Kans.....	670	19	24
Rapid City, S. Dak.....	Omaha, Nebr.....	523	17	23
Acme, Tex.....	St. Louis, Mo.....	721	20	26
Blue Rapids, Kans.....	St. Paul, Minn.....	530	18	23
Do.....	Fort Dodge, Kans.....	319	17	19

Interveners also compared rates under the proposed scale with the scale-II rates on cement for similar distances as increased under general order No. 28. This comparison shows that for distances 250 to 700 miles the rates on cement are from 12 to 19 cents as against corresponding proposed rates on plaster of 17 to 24 cents. A comparison of the proposed rates on plaster with present rates on lime from Danbury, Ohio, and Appleton, Wis., to points in central territory shows approximately the same relationships.

As stated, defendants were directed by our former report to accord to Grand Rapids and Fort Dodge the same treatment with respect to minimum carload weights. Defendants proposed at the hearing to cancel the rates on a 60,000-pound minimum from Fort Dodge to all points east of the line of the Chicago, St. Paul, Minneapolis & Omaha extending from St. Paul to Duluth, via Spooner and Trego,

Wis. This, of course, would remove the undue prejudice at such points, but no other justification for such action is shown. Defendants contend that the rates on a 60,000-pound minimum from Fort Dodge to St. Paul, Minneapolis, and intermediate points do not unduly prefer Fort Dodge or unduly prejudice Grand Rapids; that rates based on alternative minima from Fort Dodge to these points are required by competition with the so-called "dark" plasters from the west and southwest which move under minima of 30,000 and 60,000 pounds; that such rates are also controlled by the rates from the Missouri River to St. Paul and are depressed; and, moreover, that even were the rates from Grand Rapids to these destinations so adjusted as not to be "relatively higher, distance considered," than those from Fort Dodge, and the minimum weights equalized, Grand Rapids would, nevertheless, because of greater distance, be at a rate disadvantage per ton in excess of the maximum amount complainant usually absorbs on competitive business. Defendants state that the rate from Fort Dodge to Duluth is based on a differential over St. Paul and that any disturbance of that adjustment would unduly prefer one of those points and unduly prejudice the other. This, however, does not justify an unduly prejudicial adjustment of rates to Duluth as between Grand Rapids and Fort Dodge. It is also urged that as none of defendant carriers serves both Grand Rapids and Fort Dodge there is no basis for a finding of undue prejudice. This contention is not well founded, inasmuch as certain of them participate in joint rates from both points.

As found in our former report, the circumstances and conditions affecting transportation from Grand Rapids and Fort Dodge to the destination territory as a whole do not warrant relatively higher rates from one point than from the other. We do not sustain defendants' contention that there is no necessity for readjusting rates to points within the 250-mile zones. True, the present rates from Grand Rapids and Fort Dodge for distances under 250 miles are approximately equal; but the rates from Grand Rapids are relatively higher, distance considered, to points within 250 miles from Fort Dodge than are the rates from Fort Dodge to the same points or to points within 250 miles from Grand Rapids. Nor can the question whether rates from these competing points of production to points within the 250-mile zones are unduly prejudicial be determined upon an assumption that the differences in such rates, when properly adjusted according to distance, might be greater than the amounts usually absorbed by complainant on competitive business. Our former findings did not necessarily confer a right to remove the undue prejudice by generally increasing the rates from one or both points. A reasonable as well as a nonprejudicial adjustment was contemplated. On the whole, the present rates from Fort Dodge do



not appear to be less than reasonable. The 17-cent rate, which may be taken as representative, applies to a large group; yields about 10.8 mills per ton-mile for the average distance of approximately 315 miles to 41 named points in the group; and is 4 cents higher than the scale-II rate on cement for that distance as increased under general order No. 28. To 32 destinations in southern Wisconsin, named in *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.*, *supra*, the average distance from Fort Dodge and the average of the present rates, which are based on the rates approved in that case, are 318 miles and 14.7 cents, respectively. Relative distances considered, the 17-cent rate is substantially higher than the rates on plaster or lime from and to other points cited by interveners, the scale-II rates on cement, or the rates on plaster from points in Texas and New Mexico, cited in *American Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 639, and *Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 52 I. C. C., 293, as increased under general order No. 28.

To increase the rates from both Grand Rapids and Fort Dodge as proposed would result in a higher level of rates than that maintained in surrounding territory and would disregard the rightful interests of consumers and competing jobbing points. The present relationship between the rates to Minneapolis and Duluth from Fort Dodge, for example, has existed for many years. It is urged that any substantial change therein to the disadvantage of Duluth would destroy or seriously impair the ability of Duluth jobbers to compete with those at Minneapolis, not only in the territory affected by this proceeding but in larger and more important territory to the westward. Such relationships could be preserved and the undue prejudice removed by establishing rates from Grand Rapids bearing a fair relationship to the present rates from Fort Dodge.

The establishment of relatively equal rates based on a minimum of 40,000 pounds would not, however, remove the undue prejudice to Grand Rapids resulting from the maintenance of lower rates, minimum 60,000 pounds, from Fort Dodge to certain points. Little, if any, traffic moves from Fort Dodge under rates subject to the minimum of 40,000 pounds to points where alternative rates apply in connection with the higher minimum. Of the points named in one of complainant's exhibits to which such rates apply Onalaska, La Crosse, Winona, and Red Wing are grouped with St. Paul; Superior, Spooner, New Richmond, Cumberland, and Hudson, Wis., with Duluth; Bayfield, Washburn, Iron River, Prentice, and Hayward, Wis., with Ashland; and Houghton, Marquette, Negaunee, Ishpeming, and Michigamme, Mich., with Hancock. The rates and average distances from Fort Dodge and Grand Rapids to these respective groups are stated below.

Group.	Number of points.	From Fort Dodge.			From Grand Rapids.	
		Average distance.	Present rate (minimum, 60,000.)	Present rate (minimum, 40,000.)	Average distance.	Average present rate (minimum, 40,000.)
		Miles.	Cents.	Cents.	Miles.	Cents.
St. Paul.....	5	215	10	12	362	20.1
Duluth.....	6	301	12	16.5	450	20.5
Ashland.....	6	385	15	16.5	448	20.5
Hancock.....	6	545	21	22	371	19.2

<sup>1</sup> Onalaska, 15.5 cents.<sup>2</sup> Hudson, 14.5 cents.<sup>3</sup> Marquette, 25.5 cents.

Relative distances considered, the alternative rate of 10 cents from Fort Dodge to the St. Paul group is fairly comparable with the present rates from Grand Rapids to west-bank Lake Michigan ports in Wisconsin and Michigan, ranging from 10.5 to 16.5 cents. To 14 of such points named in the exhibit the rates from Grand Rapids range from 5 to 9.5 cents lower and average 6.6 cents lower than those from Fort Dodge, the average difference in distance being about 225 miles.

The alternative lower rates from Fort Dodge bear no consistent relation to distance or to the rates for a 40,000-pound minimum. On the basis of the ratio of the net to the gross weight of car and contents, the relation approved in *Western Cement Rates, supra*, a 40,000-pound minimum would require rates 20 per cent higher than a 60,000-pound minimum to afford the same revenue per gross ton-mile, counting the tare weight of the car as 38,000 pounds. If the rates from Fort Dodge, minimum 60,000 pounds, bore that relationship to the rates for a 40,000-pound minimum increased as authorized by us on July 29, 1920, they would be 13.5 cents to St. Paul, 19 cents to Duluth and Ashland, and 24.5 cents to Hancock, as compared with the actual rates of 13.5, 16, 20.5, and 28.5 cents, respectively. Applying the same relationship to an average of the rates for a 40,000-pound minimum from Grand Rapids, hereinafter prescribed as maxima, and including the general increases of 1920, would result in rates for a 60,000-pound minimum of 20 cents to St. Paul, 22 cents to Duluth, 21.5 cents to Ashland, and 20.5 cents to the Hancock group. The propriety of a 20-cent rate, 60,000-pound minimum, from Grand Rapids to the St. Paul group is further shown by comparison with the 20.5-cent rate since the increases of 1920, from Fort Dodge to the Ashland group, an average distance of 23 miles greater. Observing the differential of 2.5 cents between the rates from Fort Dodge to St. Paul and Duluth would result in a rate of 22.5 cents from Grand Rapids to the latter point. As stated, the Duluth intervenor con-

tends and defendants concede that this differential should not be disturbed. Since the average distance from Grand Rapids to the Ashland group is substantially the same as to the Duluth group and most points in the former are intermediate to points in the latter via certain routes, the rate to the Ashland group should not exceed that to Duluth. Considering the relationship between the rates for the different minima from Fort Dodge to the Hancock group the rate from Grand Rapids to that group, minimum 60,000 pounds, should not exceed 23.5 cents.

Upon further consideration of the whole record we find that the rates attacked are, and for the future will be, unduly preferential of Fort Dodge and points grouped therewith, and unduly prejudicial to Grand Rapids, to the extent that they exceed or may exceed rates, taking into consideration the increases of 1920, made as follows: To destinations nearer to Grand Rapids than to Fort Dodge, the rate from Grand Rapids, minimum 40,000 pounds, should be lower than the contemporaneous rate from Fort Dodge to the same point by not less than 0.5 cent for each 20 miles or less difference in distance; to destinations nearer to Fort Dodge than to Grand Rapids the rate from Grand Rapids, minimum 40,000 pounds, should exceed the contemporaneous rate from Fort Dodge to the same point by not more than 0.5 cent for each 20 miles or less difference in distance; and to the destinations to which rates from Fort Dodge are maintained subject to a minimum of 60,000 pounds, the rates from Grand Rapids, minimum 60,000 pounds, should exceed those from Fort Dodge by not more than 4.5 cents to the St. Paul and Duluth groups and 2 cents to the Ashland group, and should be not less than 5 cents lower to the Hancock group than those from Fort Dodge.

We further find that the rates attacked from Grand Rapids, minimum 40,000 pounds, are, and for the future will be, unreasonable to the extent that they exceed or may exceed the rates for corresponding distances stated below, which take into consideration the increases of 1920.

Distance.	Rate.	Distance.	Rate.
	<i>Cents.</i>		<i>Cents.</i>
From 161 miles to 170 miles.....	18	From 431 miles to 450 miles.....	26
From 171 miles to 190 miles.....	18.5	From 451 miles to 480 miles.....	26.5
From 191 miles to 210 miles.....	19.5	From 481 miles to 500 miles.....	27.5
From 211 miles to 240 miles.....	20	From 501 miles to 530 miles.....	28
From 241 miles to 260 miles.....	20.5	From 531 miles to 540 miles.....	28.5
From 261 miles to 280 miles.....	21.5	From 541 miles to 580 miles.....	29.5
From 281 miles to 300 miles.....	22	From 581 miles to 600 miles.....	30
From 301 miles to 320 miles.....	22.5	From 601 miles to 620 miles.....	30.5
From 321 miles to 350 miles.....	23.5	From 621 miles to 660 miles.....	31.5
From 351 miles to 380 miles.....	24	From 661 miles to 680 miles.....	32
From 381 miles to 410 miles.....	24.5	From 681 miles to 700 miles.....	32.5
From 411 miles to 430 miles.....	25.5		

In applying the preceding scale short-line distances should be used, computed in the manner described in *Western Cement Rates*, 52 I. C. C., 225, at page 229, as follows:

\* \* \* Distance via the shortest possible routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic should be used as the measure of the scale rates \* \* \* and \* \* \* It will not be necessary to revise the rates every time a new connection is installed. The use of the short-route distance is merely for the purpose of fixing a measure of the rates and does not necessarily govern the routes traversed as an operating matter. If in checking in the shortest route the lines of the same carrier are used twice in constituting different sections of the route, the two sections of the same carrier's line shall count as two of the three factors contemplated by the rule.

We further find that the rates from Grand Rapids to points in the St. Paul, Duluth, Ashland, and Hancock groups, as hereinbefore described, are and for the future will be unreasonable to the extent that they exceed or may exceed for a minimum of 60,000 pounds rates of 20, 22.5, 22.5; and 23.5 cents, respectively, which take into consideration the increases of 1920.

An appropriate order will be entered.

62 I. C. C.

No. 10755.

ALLEGHENY & SOUTH SIDE RAILWAY COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, PITTSBURGH & LAKE  
ERIE RAILROAD COMPANY, ET AL.

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*Submitted March 12, 1920. Decided June 13, 1921.*

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1. Complainant, a subsidiary of the Oliver Iron & Steel Company, found not to be a common carrier subject to the interstate commerce act.
2. The contracts under which complainant acts as switching agent for defendants are not shown to violate the interstate commerce act and the Commission is without power to abrogate the contracts or revise their terms.
3. Complainant's schedules required to be canceled, and complaint dismissed.

*William W. Collin, jr., and Borders, Walter & Burchmore* for complainant.

*George Stuart Patterson and Henry Wolf Bicklé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

HALL, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner and the matter was orally argued before us.

Complainant is a terminal switching line operating in that part of the city of Pittsburgh, Pa., known as the South Side. By complaint filed July 11, 1919, it alleges that it is a common carrier subject to the act to regulate commerce; that since April 1, 1914, it has performed for defendants terminal service in connection with interstate traffic; and that defendants' failure to fairly and justly compensate it for the services performed did and does "constitute unjust, unreasonable, unduly prejudicial and discriminatory rates and practices with respect to petitioner and industries served by it." Reparation and the fixing for the future of reasonable and non-discriminatory compensation for such services are asked.

Complainant was incorporated in 1892 under the general railroad laws of Pennsylvania with an authorized capital stock of \$50,000, all shares of which have been issued and, except six held by directors as qualifying shares, are owned by the Oliver Iron & Steel Company, hereinafter termed the industry. Its annual report for the year ended December 31, 1920, shows total assets of \$48,186.79,

consisting of \$18,221.24 in cash and \$29,965.55 in miscellaneous accounts receivable.

It operates over approximately 10 miles of track, 4.27 miles of which are yard tracks and sidings leased from the industry, 1.018 miles the main line of the Pittsburgh & Whitehall, now a branch of the Pennsylvania, and hereinafter termed the Whitehall, 2.26 miles the main line of the Pittsburgh & Lake Erie, hereinafter termed the Lake Erie, and the remainder the sidings and yard tracks of those carriers. Over a portion of the tracks of the carriers named it operates under its lease from the industry, which includes certain trackage rights hereinafter more fully described, and over the remainder under contracts to perform switching for those carriers. It bears no part of the expense of track maintenance.

Complainant has no investment in road or equipment. It leases three locomotives, four freight cars, yard office, engine house, shanty for train men, tools, etc., from the industry.

Generally described, complainant's operations extend along the south bank of the Monongahela River between Third and Twenty-first streets. About 80 or 85 per cent of its operations consist of switching inbound and outbound shipments for the Pennsylvania and Lake Erie between the interchange tracks of those carriers, located at Twenty-first street and Tenth street, respectively, and team tracks, or industries other than the proprietary industry; and switching general merchandise to a privately owned terminal warehouse between Third and Fourth streets. Its remaining operations include switching for the proprietary industry between it and the interchange tracks, and switching between mills for the industry and, occasionally, for the unaffiliated Garrison Foundry Company.

It files tariffs and annual reports with the Public Utilities Commission of Pennsylvania and with us, and complies with the safety appliance, accident report, boiler inspection, and headlight laws. It does not collect freight or demurrage charges, pay per diem, or issue bills of lading or waybills. It has but one current tariff on file with us, and in this publishes no charges except for interchange and intermill switching and weighing. It carries no passengers, express packages, or mail.

In 1881 the Oliver interests conveyed to the Lake Erie a perpetual right of way over property situated between Fifteenth and Sixteenth streets, in part consideration for which the Lake Erie granted to those interests the right of switching or moving over its line, with their own engines and at their own expense, all stock or materials used in or produced by certain of their affiliated industries located between Third and Sixteenth streets, so long as the affiliation should continue. Throughout the district in which complainant op-

© I. C. C.

erates the line of the Lake Erie comprises two, and in places three, parallel tracks.

A similar grant by the Oliver interests was made in 1885 to the newly organized Whitehall with a like provision for trackage rights, including the privilege of crossing to and from the tracks of the Lake Erie free from toll or freight. Thereupon the Whitehall constructed a single-track line from Twenty-first street, immediately south of and parallel to the Lake Erie, including switches and spurs into a terminal warehouse between Third and Fourth streets. Later, the two trunk lines jointly took over by lease certain privately owned spurs leading from the Whitehall at Eighth and Ninth streets, now used as team tracks. The Lake Erie has the right to use or cross over the Whitehall to serve the industries on the south side of the tracks.

Early in 1893 the industry leased its trackage rights to complainant, together with all railroad switches, tracks, and sidings constructed in, upon, or adjacent to its plant property, and all locomotives and other rolling stock which it owned. The industry sidings leading from the Whitehall lie between Ninth and Fifteenth streets, and the two sidings leading from the Lake Erie tracks, and between them and the river, lie between Eighth and Sixteenth streets.

Prior to 1905 the locomotives of complainant and the trunk lines operated over these tracks, and the resulting interferences led in that year to agreements under which complainant was to perform the switching to all industries and team tracks located thereon at \$1 per loaded car for the Pennsylvania, and on a cost basis for the Lake Erie. These agreements were canceled April 1, 1914, following *Industrial Railways Case*, 29 I. C. C., 212. Complainant nevertheless continued, at the request of the trunk lines, to perform the switching service without compensation. In December, 1914, following our supplemental report in *Industrial Railways Case*, 32 I. C. C., 129, new agreements were entered into, effective as of April 1, 1914, and terminable by either party upon 30 days' written notice, under which complainant engaged to perform for the trunk lines, on the basis of actual cost, all interchange switching except as to traffic of the industry. Effective June 1, 1917, the trunk lines entered into agreements with the industry, terminable by either party upon 90 days' written notice, and covered by tariff provisions, for an allowance to the industry of the cost, not exceeding 97 cents per car, of its interchange switching. The payments thus provided for have been made upon monthly bills rendered by complainant and the industry, respectively.

Although complainant's agreements with the trunk lines provided for compensation on the basis of actual cost, its witness testified that general expenses and taxes have been excluded by the trunk lines, and that maintenance of equipment has been limited to \$10 per day

for each engine in service, despite the fact that the cost has been far higher for some time. Since June or July, 1919, the full cost of engine upkeep has been charged with the consent of the trunk lines.

Complainant has submitted detailed statements of its operating expenses by periods from April 1, 1914, to June 30, 1919, which show a total operating deficit of \$44,172.60, covered for the greater part by loans from the industry. Reparation is sought in the amount named. The operating cost per car is shown as ranging from 96 cents for the calendar year 1915 to \$2.33 for the six months ended June 30, 1919, and the latter is the compensation we are asked to prescribe for the future. Complainant's witness testified that it received from defendants for interchange switching an average of \$2.02 per car for the calendar year 1918, and \$2.04 per car for the six months ended June 30, 1919. During this time the industry paid for its interchange switching complainant's published tariff rate of \$1 per car. This rate is published as a switching rate applicable on freight of all kinds from and to junctions with connecting lines to and from all industries and sidings. If complainant was and is a common carrier subject to the act it has been and is violating the law in charging defendants more than its published tariff rate for interchange switching to and from industries other than the Oliver Iron & Steel Company.

Coupled with an intimation on behalf of the Lake Erie that if its present agreement with complainant is set aside it would prefer to perform its own interchange switching, defendants resist the relief sought upon three grounds: First, that we are without power to award damages to one common carrier against another; second, that we have no jurisdiction to prescribe the terms upon which the Director General of Railroads or the trunk lines should employ complainant to do this particular work for them; and, third, that the contracts entered into with complainant have been fully performed by defendants.

A finding proposed by the examiner that complainant performs a common-carrier service was challenged by defendants' counsel on the oral argument. That proposed finding, however, relates not to the status of complainant but to the character of the service rendered. Complainant has no rails over which it could serve the public in its own right; performs interchange switching solely by virtue of contracts with the trunk lines; and has no right to use their rails except in so far as may be requisite for performance of those contracts or for switching between mills for the industry. The contracts are confined to movement of traffic of defendants' patrons. If they should be canceled complainant would be unable to perform any service except switching between mills. The interchange switching for defendants is a common-carrier service, but it is performed



by complainant as agent of defendants under specific contracts and not in its own right as a connecting line, the service being a part of the common-carrier service of defendants covered by their line-haul rates.

Complainant seems to rely mainly upon the first section of the interstate commerce act, under which, among other things, it is made the duty of common carriers subject to the act to provide transportation, including all services in connection with the receipt and delivery of property transported, to establish through routes and just and reasonable rates applicable thereto, and to provide reasonable facilities for operating through routes and reasonable compensation to those entitled thereto. Complainant is not a party to joint rates, or, in its own right, a participant in through routes. To require the trunk lines to cancel their contracts with complainant, and admit it to participation in their through routes and joint rates, would be to require them to surrender for that purpose portions of their own tracks and their right to perform the service themselves. This we may not do.

Nor are we empowered to abrogate retroactively, by an award of reparation, contracts which were voluntarily entered into and thus far have been fully performed on both sides, under which complainant acts as agent for defendants, performing for them on their own rails a part of their transportation service, and to substitute therefor against defendants' will another and different relationship.

We are of opinion and find that complainant was not and is not a common carrier subject to the interstate commerce act; that defendants have had and still have the option of performing the work themselves or of employing their switching agent upon their own terms, if unjust discrimination or undue prejudice or preference is not thereby created; that the contracts under which complainant acts as switching agent of defendants are not shown to have been or to be in violation of the interstate commerce act; and that therefore we are without power to abrogate or reform the contracts.

As to the allegations of unjust discrimination and undue prejudice, no industrial or other switching line similarly situated is shown to have been or to be accorded preferential treatment by defendants. The only contention in this respect is that the trunk lines have discriminated between the traffic of the proprietary industry and that of the other industries served. The industry is not before us seeking relief. Complainant has received its published tariff charge for performing interchange switching for the industry, and admits that it has never sought to have this charge increased.

Complainant should promptly cancel its schedules on file with us. The complaint will be dismissed.

No. 11139.

TEXAS CARNEGIE STEEL ASSOCIATION

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS  
NOS. 998, 999, 1625, AND 4643.

*Submitted June 23, 1920. Decided June 14, 1921.*

1. Combination rail-and-water rates on cold-rolled or drawn steel bars, bar iron (polished), and shafting, carloads, from Beaver Falls, Pa., Cumberland, Md., and other points, to Galveston, Tex., via New York, N. Y., found unreasonable to the extent that the water rate from New York to Galveston exceeded or may exceed the rate contemporaneously applied on merchant-steel bars. Measure of reasonable maximum rate prescribed and reparation awarded.
2. Fourth section relief denied.

*J. McAdoo Sample* and *E. H. Thornton* for complainant.

*H. C. Eargle* for Houston Chamber of Commerce; and *E. H. Thornton* for Galveston Commercial Association, interveners.

*J. H. Tallichet, Baker, Botts, Parker & Garwood*, and *F. H. Wood* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

Exceptions were filed by complainant to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those suggested by him.

Complainant is an association organized under the laws of the state of Texas and engaged in the purchase, sale, distribution, and fabrication of iron and steel products at Galveston, Tex. By complaint filed January 9, 1920, it alleges that the combination rail-and-water rates charged by defendants on cold-rolled or drawn steel bars, bar iron (polished), and shafting, in carloads, from Cumberland, Md., in Atlantic seaboard territory, and from Beaver Falls,

Pa., and other points adjacent to Atlantic seaboard territory, as named in Pittsburgh & Lake Erie tariffs I. C. C. Nos. 1831 and 2000, and Baltimore & Ohio tariffs I. C. C. Nos. 14758 and 15791, to Galveston via New York, N. Y., were and are unreasonable and unduly prejudicial in so far as they exceeded and exceed the rates on merchant steel from and to the same points, and also violative of the long-and-short-haul provision of the fourth section of the act to regulate commerce in that they were and are higher than rates contemporaneously applicable over the same route via Galveston to Houston and other points in Texas. Complainant seeks the establishment of reasonable and nonprejudicial rates, and reparation on shipments which moved prior to the filing of the complaint and on any other that may move "pending settlement of this complaint." The Houston Chamber of Commerce and the Galveston Commercial Association intervened, but introduced no evidence. Rates will be stated in cents per 100 pounds, and unless otherwise indicated are those in effect when this case was submitted.

Between August 25, 1918, and January 9, 1920, date when the complaint was filed, 17 carload shipments of the commodities named, hereinafter termed cold-rolled bars, were received by complainant at Galveston. Of these, 15 originated at Beaver Falls and 2 at Cumberland. They were purchased f. o. b. points of origin, and the rates charged were combinations of fifth-class and commodity rail rates, respectively, to New York, and a commodity rate of 46.5 cents for the water haul beyond, aggregating 66, 71, and 73.5 cents from Beaver Falls and 72 cents from Cumberland. The rates of 66 and 71 cents apparently were assessed without tariff authority and resulted in undercharges. From February 29, 1920, until the general increases in August of that year, the applicable rate from Cumberland to Galveston was the joint fifth-class rail-and-water rate of 68 cents, 4 cents lower than the combination. The applicable tariff authorizes use of the joint or combination rate according as the one or the other makes the lower charge.

Although complainant assails the through rates, its evidence relates particularly to the 46.5-cent component, published by the Mallory Steamship Company and the Southern Pacific Company-Atlantic Steamship Lines, as a local and proportional rate from New York to Galveston. This rate applies on shipments described as:

Machinery, Machines, and Electrical Appliances taking Class "A" rates under the heading of "Machinery and Machines" and "Electrical Appliances and Machinery" in current Western Classification; including Cold Rolled Steel Bars, Bar Iron (Polished), and Shafting; carloads, minimum weights as per Western Classification.

The water rate on ordinary iron and steel bars from New York to Galveston is 27.5 cents, but by specific exception it does not apply to cold-rolled bars. In effect, complainant seeks the removal of that exception, urging that the rate on cold-rolled bars should not exceed that on ordinary bar steel, commonly known as merchant or mild steel. Prior to March 31, 1916, cold-rolled bars took the same water rate from New York to Galveston as merchant steel, but since that date the rate on the former has been from 8 to 19 cents higher.

All bar steel is originally rolled hot. To produce cold-rolled bars the bar steel is then cleaned with acid for the purpose of removing mill scale and without reheating is passed repeatedly through very smooth rolls or drawn through dies. The effect of this process is to compress the steel, make it harder and more resilient, and give it a highly polished surface. The bars are also reduced thereby to a more exact size. Cold-rolled bars may be round, square, hexagonal, or of other shapes. Round bars, sometimes called common shafting, do not constitute the greater number of pieces in complainants' shipments, but because of their greater individual weight they constitute the greater tonnage. Complainant receives round bars 20 and 24 feet in length and ranging from  $1\frac{1}{8}$  to  $8\frac{1}{2}$  inches in diameter. A bar  $5\frac{1}{8}$  inches in diameter and 24 feet long will weigh over 2,250 pounds.

Complainant's witness gives the following as representative prices on March 11, 1920, f. o. b. Pittsburgh, Pa., of steel articles included among the commodities taking the merchant-steel rates:

	Per 100 pounds.
Soft steel bars.....	\$2.35-\$4.00
Bar iron.....	4.50
Stalk cutter bar steel.....	6.50
Hammered lay bar steel.....	8.25
Tool bar steel.....	15.00-100.00

as compared with \$3.60 per 100 pounds, the contemporaneous price of cold-rolled bars. Apparently the prices are subject to wide fluctuations and vary according to the size of the bars. Thus, a typical invoice in evidence, dated February 7, 1919, shows prices on cold-rolled bars, round, ranging from \$5.25 per 100 pounds for bars  $1\frac{1}{8}$  inches in diameter to \$7.75 for those  $5\frac{1}{8}$  inches in diameter.

Complainant's witness testified that rail carriers do not ordinarily charge higher rates on cold-rolled bars than on other bar steel. He instanced a rate of 73.5 cents on shafting from Pittsburgh to Galveston, Houston, and other destinations in southern Texas, 1.5 cents lower than the rate on merchant steel from and to the same points. Complainant put in evidence rate advice No. 1620 of the United States Railroad Administration, dated February 7, 1919, which au-

thorized the addition of the following note to tariffs applying on iron and steel bars in western territory:

Rates apply on drawn or rolled Iron or Steel Bars or Rods, either square, round or otherwise shaped in the drawing or rolling process; also on such Bars or Rods when bent, twisted, or otherwise deformed, galvanized, ground, hammered, punched or sheared, but rates will not apply if further work has been done.

This note, or a similar one, is now contained in a large number of tariffs publishing rates on iron and steel to destinations in the southwest, including Texas, from various points of origin in other states.

The rates assailed are compared with those on canned goods, rope, bags (secondhand), coffee (green), and sugar from New York and other Atlantic seaboard points to Houston, Beaumont, and other Texas points taking Houston rates via Gulf routes, ranging from 35 to 63 cents. The 46.5-cent rate on cold-rolled bars is also contrasted with water rates from and to the same points which range from 18 to 32 cents on many other commodities classified fifth class, including bagging, boiler parts, borax, chloride of calcium, canned goods, green coffee, sheet lead, castings, cotton ties, hay-bale ties, wire and nails, wrought-iron pipe, siding, car springs, condensed milk, plaster, tin plate, soda, starch, sugar, and sirup.

Defendants in justifying their policy of maintaining higher rates on cold-rolled bars than on merchant steel urge that the former must be considered of higher grade in view of the additional processes required in their manufacture, their higher market value, and the special uses for which they are sold, notably for machinery shafting and automobile axles. Defendants concede that tool steel and certain other higher-priced varieties are given the same rates as merchant steel, but explain that this is because of their similarity in appearance. The principal reason advanced in support of higher rates on cold-rolled bars is that a greater degree of care is required in handling them as steamship freight. It is testified that their highly polished surface renders them susceptible to damage from rust, particularly in salt air. For that reason they are received from the shippers with a coating of thick grease, whereas there is no such protection in the case of other bar steel, from which the mill scale is not removed prior to shipment. The grease makes these bars slippery and difficult to handle, increasing the hazard of accidents in loading and unloading vessels. On one occasion five bars of shafting slipped from a rope sling as they were being unloaded and dropped into the vessel's hold, seriously damaging the flooring and plates beneath. Damage to cold-rolled bars from bending is also more serious than in the case of ordinary bar steel.

Defendants' contention that cold-rolled bars may properly be charged higher rates than the ordinary bar steel, because of their higher market value, is without substantial merit, inasmuch as the lowest-priced steel bars are worth only about \$1.25 per 100 pounds less than cold-rolled bars, and many special grades of steel bars, considerably higher in price than cold-rolled bars, take the merchant-steel rates. It further appears that rail carriers make no distinction for rate-making purposes between cold-rolled bars and other bar steel. Defendants' witnesses were unable to state what percentage of loss-and-damage claims in respect of shipments of steel is chargeable to cold-rolled bars. They introduced no evidence tending to show what additional expense, if any, is properly attributable to the extra cost and risk claimed to be incident to the handling of this traffic over the water portion of the hauls.

No distinction is made between cold-rolled bars and merchant steel on traffic moving under rail-and-water rates from Atlantic seaboard territory to Texas by way of New York and Galveston. The same difficulty and risk in loading and unloading vessels is encountered as in connection with complainant's shipments. The present spread of 19 cents in the water rates represents nearly 70 per cent. Computed upon the average weight, 82,485 pounds, of the shipments here under consideration, that spread results in carload freight charges higher by \$156.63 on cold-rolled bars than on merchant steel. Upon this record transportation conditions are not sufficiently different to warrant higher rates on cold-rolled bars than on ordinary steel bars.

Complainant bases its allegation of a fourth section violation on the fact that defendants publish a joint rail-and-water rate of 62 cents on iron and steel articles, in carloads, from Cumberland and other Atlantic seaboard points to Houston, Beaumont, Orange, Sabine, and Port Arthur, Tex. Traffic under this rate moves to Galveston by the lines of two of the three defendant steamship companies and beyond by certain of the defendant rail carriers. The commodity description is accompanied by a note providing that the rate is "not applicable on Bars, either square, round or otherwise shaped, on which any work has been done except that of rolling, grinding or hammering." Complainant interprets this provision as making the rate applicable on cold-rolled bars. Defendants deem the rate inapplicable. In view of the conclusions herein reached no necessity appears for determining this question.

There were assigned for hearing with the complaint those portions of certain fourth section applications by which the carriers parties thereto ask authority to continue to charge, for the transportation of cold-rolled or drawn steel bars, bar iron (polished), and shafting from Beaver Falls, and from New York, Cumberland, and

other points in Atlantic seaboard territory to Galveston (via New York and the Southern Pacific Company-Atlantic Steamship Lines), rates which are higher than those to destinations beyond Galveston. Defendants do not attempt to justify any such deviation from the fourth section, otherwise than to point out that defendant Southern Steamship Company, also a party to the 62-cent rate, operates between Philadelphia, Pa., and Houston without touching at Galveston. An examination of the tariffs discloses that the Southern Steamship Company did not join in this rate until some time after it had been published by the Mallory and Southern Pacific lines.

The only evidence bearing on the alleged violation of section 3 of the act tends to prove that the two grades of steel are sold for different uses and do not compete with each other.

Upon consideration of the record we are of opinion and find that the applicable rates were, are, and for the future will be, unjust and unreasonable to the extent that the water rates from New York to Galveston exceeded or may exceed the water rates on merchant-steel bars, in carloads, contemporaneously in effect from and to the same points; that complainant made shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

To the extent that it is involved fourth section relief will be denied.

Appropriate orders will be entered.

62 I. C. C.

No. 11633.  
RIDGE COAL MINING COMPANY.  
v.  
MISSOURI PACIFIC RAILROAD COMPANY ET AL.

*Submitted April 2, 1921. Decided June 17, 1921.*

1. Defendants' failure to make arrangements whereby complainant's mine located on the Missouri Pacific system at Herrin, Ill., will be enabled to avail itself of the services, facilities, and rates of the Chicago, Burlington & Quincy Railroad, in connection with the interstate transportation of coal, found not to result in undue prejudice to complainant.
2. The publication by the Chicago, Burlington & Quincy Railroad of rates from the Jeffries mine located on the Missouri Pacific at Herrin, Ill., found to be contrary to our tariff rules and required to be discontinued.
3. Complaint dismissed.

*C. E. Heckler and C. B. Cardy* for complainant.

*Henry G. Herbel* for Missouri Pacific Railroad Company.

*Kenneth F. Burgess and J. C. James* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS CLARK, AITCHISON, AND POTTER.

*POTTER, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed on behalf of the complainant and oral argument has been had thereon.

Mines in the Illinois coal fields are denominated, with reference to the method by which they are served by the railroads as "local mines," "joint mines," or "junction-point mines." As used herein the term "local mine" means a mine situated on and served by only one railroad; the term "joint mine" means a mine located on the rails of only one railroad but which is served by one or more additional railroads; and the term "junction-point mine" means a mine served by two or more railroads with their own rails. Joint mines are treated by the carriers, in the matter of car supply and other transportation services, the same as mines physically located on more than one railroad. Thus in times of car shortage a joint mine may draw cars from each of the railroads to which the mine is joint, whereas a local mine is limited in its supply to the one line serving



it. The record shows that the practice of making joint mines out of what would otherwise be local mines is quite extensive throughout the southern Illinois coal group, and that it is done by practically all of the coal-carrying roads in Illinois.

For complainant it is stated that a mine which would otherwise be a local mine is given a joint status in one of two ways: (1) by a trackage agreement under which a line whose rails do not reach the mine serves it over the rails of the line which does reach it; or (2) by a switching absorption arrangement entered into between the line which does not reach the mine with its own rails and a line which does, under which the former absorbs the switching charges of the latter, applicable between the mine and the junction point of the two carriers. Defendant Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, disputes the accuracy of this statement in so far as it relates to mines being made joint by switching absorption arrangements, and states that in times of car shortage it furnishes equipment only to mines which it reaches with its own rails or under trackage agreements.

The line of the Burlington extends through the southern Illinois coal group in a general north and south direction. At Herrin, Ill., it connects with an east and west line of the Missouri Pacific, which serves a mine which will hereinafter be referred to as the Jeffries mine, located 2 or 3 miles east of the junction point. About 2 miles south of this junction point the Burlington crosses an east and west line of the Coal Belt Electric Railway, a part of the Missouri Pacific system, which serves a mine owned and operated by the complainant, located about 1 mile east of the crossing. These two roads have a physical connection through a joint track serving a mine at the crossing, but it appears that the mine also has an interest in this track, and there is a question whether shipments from complainant's mine could be interchanged on this track without the consent of the mine which it serves. It appears that there are other physical connections between the Coal Belt Electric Railway and the Burlington in this territory, but their exact location is not shown.

The complainant's mine is at present a local mine on the Missouri Pacific system, and this proceeding grows out of the failure of the defendants to accord it a joint status. The complainant alleges that the failure of the defendants to make arrangements whereby complainant's mine will be enabled to avail itself of the services, facilities, and rates of the Burlington, as well as those of the Missouri Pacific, in connection with the interstate transportation of coal which it produces, results in undue prejudice to it, and it is prayed that the alleged undue prejudice be removed. No joint rates are in effect from complainant's mine via the Burlington, and none are asked.

The record establishes that a joint or junction-point mine has a decided advantage over a local mine in the matter of car supply as well as in other respects.

The Burlington extends its service to a number of mines with which complainant competes in the southern Illinois field, which it does not reach with its own rails. Its testimony that it serves these mines only under trackage agreements is uncontroverted except with respect to the Jeffries mine which will be specifically referred to later. The trackage agreements have not been filed with us as required by paragraph 5 of section 6 of the interstate commerce act. It also appears that the Burlington absorbs the switching charges of other carriers at a few mines in other Illinois fields, but its testimony is, as above stated, that it does not furnish equipment to such mines in times of car shortage.

The complainant insists that there is no justification for the Burlington giving to the other mines referred to the benefits growing out of the extension of its services to them, while it refuses to accord similar treatment to complainant's mine.

It appears that substantially all of the existing trackage agreements of the Burlington were entered into at a time when the carriers were actively competing for additional business. The Burlington objects to further extensions of its service to mines not on its rails on the ground that, during periods of car shortage, it is unable to provide an adequate supply of equipment for shippers to whom it already owes an obligation to furnish transportation.

If mines of complainant's competitors now reached by the Burlington under trackage agreement were served directly by its rails, it could not be maintained that complainant would be unduly prejudiced because of the advantages accruing to its competitors due to service of their mines by more than one railroad, and the complainant does not so contend. It is our view that the service of such mines by the Burlington under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. *Commercial Club of Superior, Wis., v. G. N. Ry. Co.*, 24 I. C. C., 96; *Penick & Ford v. Director General*, 61 I. C. C., 173.

The equality in treatment among shippers which the law requires of a carrier extends only to shippers whom it is under a duty to serve, and the Burlington owes no such duty to the complainant. A railroad must be allowed some latitude for the exercise of business judgment and discretion in determining the scope of its operations, having due regard for the provisions of the interstate commerce act. Under paragraph 21 of section 1 of the act we may require a carrier to extend its line only when the extension is reasonably required in

the interest of public convenience or when the expense involved will not impair the ability of the carrier to perform its duty to the public. Paragraph 22 of the same section provides that the authority granted by paragraph 21 shall not extend to spur, industrial, team, switching, or side tracks, located or to be located wholly within one state.

Upon a careful consideration of the question presented in the light of the evidence of record we conclude that the mines of complainant's competitors which are given a joint status by reason of the Burlington serving them under trackage agreements are in the same category as junction-point mines; that there is no logical distinction between the two; that the actual or constructive location of the competing mines upon two or more lines of railroad substantially differentiates their situation from that of the complainant's local mine; and that the preference and advantage over the complainant which such competing mines enjoy by reason of service by two or more lines, is not undue.

It is not to be understood from the foregoing that a trackage agreement might not be the means of extending preferential treatment to one shipper to the undue prejudice of another. For instance, if a carrier extends its service by a trackage agreement to one mine on another line, it would be difficult, if not impossible, to justify a refusal to accord similar treatment to another intermediate competing mine located on the track over which it operates under the trackage agreement. Such a case, however, is not presented here. It should also be understood that what we have said with reference to trackage agreements has no reference to switching absorption arrangements. It is well settled that if the carriers absorb switching charges for one shipper, they must do the like for all others similarly situated and entitled to like treatment. Upon this record, however, there is no showing of such similarity in circumstances and conditions at mines in other Illinois coal fields at which the Burlington absorbs switching charges, and at complainant's mine, as would support a finding that a' are entitled to like treatment.

We now come to a consideration of the situation at the Jeffries mine, upon which complainant lays great stress because of the active competition between it and complainant's mine, and the fact that both are located within the Missouri Pacific's switching limits at Herrin. The Jeffries mine was and is served directly by the rails of the Illinois Central and the Missouri Pacific. Owing to the fact that this mine was a good producer and that its coal was desirable for railroad use, prior to federal control the Burlington had been negotiating with the Missouri Pacific with a view to extending its service to the Jeffries mine under a trackage agreement. The agreement had not been consummated when the carriers were taken under federal

control. Under date of June 15, 1918, H. H. Berry, superintendent of the Missouri Pacific, and W. A. Chittenden, superintendent of the Burlington, addressed the following joint letter to their respective general superintendents:

In accordance with your instructions, we have conferred on the question of building a connection between the Burlington and Mo. Pac. tracks at Herrin, Illinois, for the purpose of serving the Jeffries Mine with Burlington empties, and after going into the matter very thoroughly we recommend the following:

Connection to be made from Burlington No. 7 Mine lead to the Mo. Pac. wye tail track, this proposed cross over being about 745 ft. long and located where a connection formerly existed.

By the use of this connection, the Burlington engine can shove empties from the Herrin Junction yard through the Mo. Pac. wye into what is known as the Mo. Pac. Herrin empty yard, from which point the Mo. Pac. engine will handle the empties to the Jeffries Mine and return the loads to the same point, where the Burlington engine will be expected to receive them.

The only additional trackage necessary for this arrangement is the proposed connection above mentioned, which will cost approximately \$1,500.00. We further recommend that each line put in their own switch and build the connection to the right of way line, which would cause about equal expense to both companies, and that the compensation to the Missouri Pacific for handling the business, including trackage and rental, be \$4.00 per loaded car,—this with a view of eliminating a lot of extra book keeping and which would be fair to both lines.

It is understood that no per diem will accrue on equipment furnished by the Burlington and that any damage to the equipment caused by the Mo. Pac. Company will be made good by that line.

This letter is the only evidence of the agreement between the railroads and was not placed on the record until after the argument.

The recommendations were adopted and acted upon. In its tariffs the Burlington showed the Jeffries mine as located on its line at Herrin; provided that the Herrin rates would apply therefrom; and furnished equipment for the use of that mine. The Missouri Pacific switched cars between the Jeffries mine and the Missouri Pacific Herrin empty yard for the Burlington, for which service the Burlington paid it \$4 per car. This arrangement has continued until the present time, except that effective October 10, 1920, an increase of the \$4 charge to \$5.50 was arranged by an interchange of letters between the railroads.

Under the terms of this agreement the Burlington is not given a trackage right to the Jeffries mine. It has the right to use the Missouri Pacific's tracks only to the extent necessary to place and receive cars at the Missouri Pacific's Herrin empty yard, and the service beyond the yard is, as stipulated in the agreement, performed by the Missouri Pacific for the specified charge. As the Jeffries mine is not actually upon the rails of the Burlington, and can not, under the terms of the agreement in question, be considered as constructively

The complainants operate two local mines, the Dering mine No. 3, situated on the Big Four, 0.8 mile northeast of Eldorado, and the J. K. Dering Coal Company mine No. 2, situated on the Illinois Central Railroad, 2.5 miles west of Eldorado. The complainants ask that the Illinois Central shall serve the mine on the Big Four, and that the Big Four shall serve the mine on the Illinois Central, under trackage agreements or switching absorption arrangements, and thereby make their mines joint mines. It is alleged that the failure of the defendants so to do results in unjust discrimination and undue prejudice in connection with the service rendered to complainants' mines as compared with joint mines, and that the coal rates applicable from complainants' mines are unreasonable, unjustly discriminatory, and unduly prejudicial.

The advantages which would accrue to the complainants if they should prevail would be a better car supply in times of car shortage, due to the opportunity they would then have to draw cars from both lines; an additional route to Chicago and other points reached by both lines; and access by each mine to local markets on both lines instead of only the local markets on its one line, as at present. The latter is illustrated in this way: The Dering mine No. 3, on the Big Four, in shipping to local points on the Illinois Central, would now pay the group rate from Eldorado plus the local distance tariff rate of the Big Four to Eldorado. The latter charge would be eliminated under the complainants' proposed plan. The benefit chiefly sought by complainants, however, is better car supply to the joint mine in times of car shortage. The record shows that the joint mine has an advantage in this respect.

The Big Four assumed the burden of the defense of this case. It is strongly opposed to permitting the Illinois Central to reach the complaining mine on its line or to extending its service to the complaining mine located on the Illinois Central. It was testified for the Big Four that it has expended large sums of money in improving its facilities and providing equipment for handling coal traffic in the southern Illinois coal field, and that it desires to use its equipment and facilities in the service of shippers to whom it is already under an obligation to furnish transportation. It was further suggested that if it allows the Illinois Central to reach the complaining mine on its line it would be unable successfully to resist claims for similar treatment of other mines which it serves in the same general territory and which produce a large coal tonnage; and that in return for traffic lost to the Illinois Central it would get substantially nothing from that road.

An exhibit introduced by complainant shows 19 mines in the southern Illinois group, 4 mines in the Springfield district, and 1

mine in the Danville district, some of which are served by two or more lines direct and all of which are said to be served by one or more lines in addition to those upon whose rails they are located, by trackage agreements or switching absorption arrangements.

It is stated that the Big Four participates in arrangements under which two of the mines shown in the southern Illinois group and all of the mines shown in the Springfield and Danville districts are given a joint status. One of the two mines in the southern Illinois group, located about 2.75 miles south of Eldorado on the Louisville & Nashville, is served by the Big Four under a trackage agreement, the mine reimbursing the Big Four for payments which it has to make to the Louisville & Nashville, under the agreement; and the other, located at Eldorado, is reached direct by the tracks of the Big Four and the Illinois Central, but for convenience and economy of operation the two roads have an arrangement whereby the Illinois Central tracks are used for placing all empty cars at the mine and the Big Four tracks are used for taking all loaded cars out. Three of the mines in the Springfield district are served by a joint track of the Big Four and the Chicago & Eastern Illinois extending from Pana to Granite City, Ill. The other mine in this district, which is near Hillsboro, Ill., is served by the Big Four's own rails. That road formerly published a switching charge from the mine to the connection of the Big Four's track with the joint track of the Chicago & Eastern Illinois and Big Four at Hillsboro, which charge was absorbed by the Chicago & Eastern Illinois. Since the hearing this switching charge has been canceled and the resulting situation is now before us in another proceeding, No. 11674. The mine in the Danville district is served by the Big Four under a trackage agreement with the Chicago & Eastern Illinois. It will therefore be seen that in each instance shown, where the Big Four now participates in an arrangement for according a mine a joint status, it is done under a trackage agreement.

This case, in so far as the question of joint service is concerned, is controlled by the principles announced in *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 62 I. C. C., 259. We there found, in substance, that the service of a mine by a carrier under a trackage agreement is, in practical and legal effect, the substantial equivalent of an extension of its rails to the mine; that a mine which is accorded a joint status by means of a trackage agreement is in the same category as a junction-point mine; and that, generally speaking, a carrier is not chargeable with undue prejudice because it extends its service to certain mines, either by extensions of its rails or under trackage agreements, thereby giving them the advantages of a joint or junction-point status, while declining to make other extensions or trackage agree-

ments to extend its service to other mines. We recognized that there might be certain exceptions to these general principles, but no exceptional circumstances are here presented.

Following the case cited, and upon this record, we are of opinion and find that the refusal of the Big Four to participate in arrangements whereby the services and facilities of the Illinois Central and the Big Four will be available to the complaining mines does not result in undue prejudice to them. As the Big Four is a necessary party to such an arrangement at either of the complaining mines, it will not be necessary to discuss the situation on the Illinois Central.

The complaint contains an attack upon the rates applicable from complainants' mines, growing out of the fact that coal shipped from the mine on either the Illinois Central or the Big Four, via the line of the other road to local or common points must pay the local rate of the originating line to the junction point plus the group rate applicable via the other line beyond. Each of the complaining mines now has the benefit of the group rates on shipments via the line on which it is located. Substantially the only evidence offered by the complainants in support of the allegation of unreasonableness consisted of comparisons of the combination rates applicable on shipments from each of their mines when moving over both the Illinois Central and the Big Four, with the group rates applicable on shipments from joint mines when moving via lines which do not reach the mines with their own rails, but which serve them under trackage agreements. In view of the difference in the situation of joint mines and local mines which we have recognized herein, and our denial of complainants' prayer that their mines be made joint mines, such comparisons are not helpful. It appears to be the general practice of roads serving the Illinois coal fields to restrict the application of their group rates on coal to points which they serve either directly or as joint mines, and to require coal originating on other lines to pay the rate of the originating line to the junction point, in addition to the group rate. In the absence of a showing that the complaining mines are entitled to joint rates, the record affords no basis for condemning rates made in accordance with the present practice, and there is no evidence that either component of the combination rates applicable from the complaining mines is unreasonable.

We find that defendants' rates on coal from complainants' mines are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial.

It developed in this case that the trackage agreements hereinbefore referred to had not been filed with us, as required by paragraph 5 of section 6 of the interstate commerce act.

An order will be entered dismissing the complaint.

No. 12081.<sup>1</sup>  
**FAIRMONT & CLEVELAND COAL COMPANY**  
 v.  
**BALTIMORE & OHIO RAILROAD COMPANY.**

*Submitted May 24, 1921. Decided June 21, 1921.*

Defendants' practices in distributing cars to mines of complainants for coal loading found to be unreasonable and unduly prejudicial. Reasonable and nonprejudicial rules prescribed for the future.

*James W. Carmalt* for complainants and interveners supporting complaints.

*Francis R. Cross* for Baltimore & Ohio Railroad Company; *James Stillwell* for Monongahela Railway Company; *W. H. T. Loyall* for Virginian Railway Company; and *W. S. Bronson* for Chesapeake & Ohio Railway Company.

*P. H. Greenlaw* and *Thomas L. Phillips* for Fifth and Ninth Districts Coal Bureau; *George T. Bell*, *George S. Brackett*, and *G. H. Caperton* for Northern West Virginia Coal Operators' Association and local mine operators in the New River district; and *F. H. Harwood* for Illinois Coal Traffic Bureau, interveners.

**REPORT OF THE COMMISSION.**

DIVISION 5, COMMISSIONERS CLARK, ATTCHISON, AND POTTER.

**BY DIVISION 5:**

These cases involve the same issue, were heard together, and will be disposed of in one report.

Complainants are corporations in West Virginia engaged in the operation of bituminous coal mines. The mine of complainant in Nos. 12081 and 12082, known as the Parker Run mine, is located at Fairmont, W. Va. Complainant owns and maintains about 1.5 miles of siding on its mining property, connected at the west end with the Baltimore & Ohio Railroad and at the east end with the Monongahela Railway. The complainants in Nos. 12083 and 12084 operate 11 mines in the New River district, W. Va., which are served by the Chesapeake & Ohio and Virginian railways, as will

<sup>1</sup> This report also embraces No. 12082, Same v. Monongahela Railway Company; No. 12083, New River Company et al. v. Virginian Railway Company; and No. 12084, Same v. Chesapeake & Ohio Railway Company.



hereinafter be more fully explained. The New River Company controls by stock ownership the other complainant corporations in the New River district.

It is alleged in substance that the rules, regulations, and practices governing the distribution of cars for the transportation of coal from the mines of complainants to interstate destinations have been since October, 1918, and still are, unjust, unreasonable, and unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. We are asked to prescribe for the future just and reasonable rules, regulations, and practices with respect to the distribution of coal cars at mines served by two or more carriers, hereinafter termed joint mines.

An intervening petition in support of complainants' contentions was filed at the hearing in Nos. 12083 and 12084 by 14 coal companies operating 23 joint mines in the New River district. These interveners will hereinafter be treated as complainants. Intervening petitions in opposition to complainants' contentions were filed on behalf of the Northern West Virginia Coal Operators' Association in Nos. 12081 and 12082 and on behalf of 14 operators of local mines in the New River district in Nos. 12083 and 12084. The Fifth and Ninth Districts Coal Bureau and Illinois Coal Traffic Bureau intervened in all four cases, but the latter took a neutral position. No evidence was offered by these interveners except the Northern West Virginia Coal Operators' Association, although the Fifth & Ninth Districts Coal Bureau filed a brief.

In *In Re Irregularities in Mine Ratings*, 25 I. C. C., 286, hereinafter referred to as the *Illinois Case*, we laid down the following rule to govern distribution, during the periods of car shortage, of coal cars to joint mines served by the Illinois Central and other carriers:

We think that on days for which it orders no cars from any other carrier, the junction-point mine should be given its prorata of cars by the Illinois Central on the basis of its full rating; that on a day for which it orders cars from one other road, its rating on the Illinois Central for that day should be 75 per cent of its full rating; and that on a day for which it orders cars from two other roads, its rating on the Illinois Central for that day should be 50 per cent of its full rating.

This rule, however, was not followed by the defendants herein. The Baltimore & Ohio, Chesapeake & Ohio, and Monongahela treated the joint mines the same as local mines in the distribution of cars. They had no information of the number of cars ordered from the other carrier. So far as they were concerned the joint-mine operator could order and secure 100 per cent car supply from each road. The practice of the Virginian was unique. Its car supply practi-  
62 I. C. C.

cally met the demands of the shippers along its line. It therefore set aside a certain number of cars to take care of its fuel needs and of mines under development and prorated the remainder of its equipment in proportion to the shipments via the Virginian for the preceding 12 months. If one shipper, for example, were issued 480 cars in the pool, it was embargoed, after its loading exceeded the number of cars set aside for the mine or mines until the cars were made empty, and was penalized four days to permit the empties to return from the destination to the mines. This practice was followed at both local and joint mines.

Effective October 10, 1918, Car Service Circular CS-31 became effective, and under rule 2 prescribed the following method for ordering cars for joint mines:

Copies of orders for cars from a mine that is joint with any other carriers (steam, electric or water) shall be filed with the designated representative of each such carrier. Such combined requests must not exceed the gross daily rating of the mine.

After the signing of the armistice, and until the summer of 1919, there was a lessened demand for coal, and the resultant surplus of coal cars enabled carriers generally to accord all mines a full car supply. The limitations of the rule were not therefore felt until a car shortage developed in the summer of 1919. From that time until approximately December, 1920, the available supply of cars for coal loading throughout the country was insufficient to meet the demands.

At the time Circular CS-31 became effective the Chesapeake & Ohio and Virginian joint mines were zoned, and the car service rules affecting joint mines were not in force. Because of that fact mines zoned to the Virginian had to depend upon the Virginian and mines zoned to the Chesapeake & Ohio had to depend upon the Chesapeake & Ohio, exclusively, for cars.

On March 2, 1920, we issued a notice to carriers and shippers in which we recommended that until experience and careful study demonstrated that other rules would be more effective and beneficial, especially during the remainder of the early spring, the uniform rules as contained in the Railroad Administration's Car Service Circular CS-31, Revised, be continued in effect. By further notice to carriers and shippers dated April 15, 1920, our notice of March 2 and our recommendation therein was modified as to rule 8 of the circular. Rule 2 of Car Service Circular 31 became rule 4 in the revised circular, but contained no change. The complaints are directed against the last sentence of rule 4.

On July 8, 1920, the Chesapeake & Ohio and Virginian, on request of complainants, filed with us a petition asking that they be per-

62 I. C. C.

mitted to follow the rule laid down in the *Illinois Case*. We declined informally to take that action. These complaints followed.

There are two joint mines on the White Oak branch of the Chesapeake & Ohio extending from Glen Jean to Carlisle. This branch was formerly the White Oak Railway. Later the Chesapeake & Ohio granted to the White Oak Railway trackage rights over this branch to enable it to reach these two mines. In the meantime the White Oak Railway had built a new line from Carlisle to Lochgelly and from Duncan's Crossing, a point intermediate to Lochgelly, to Bishop, where it connected with the Virginian Railway. There are three mines located on this new line. In 1912 the Chesapeake & Ohio and the Virginian jointly leased the White Oak and the Piney River & Paint Creek Railroad. In 1917 the new line of the White Oak, above referred to, was purchased by the Virginian and it is now known as its Wolf Creek branch. In the same year the Chesapeake & Ohio purchased the Piney River & Paint Creek, now known as the Piney River & Paint Creek branch, which connected with the Piney Creek branch of the Chesapeake & Ohio at Beckley Junction. Three and two mines are located on these branches, respectively. The Chesapeake & Ohio also purchased the Price Hill division of the White Oak Railway extending from Price Hill Junction to Price Hill, a distance of about 2.5 miles. This division had no connection with the Wolf Creek branch of the Virginian. Under the terms of a trackage agreement dated November 1, 1917, the Chesapeake & Ohio granted certain trackage rights to the Virginian and the Virginian granted certain trackage rights to the Chesapeake & Ohio over the newly acquired lines, as well as over their own lines, to make the necessary connection with their own operation. This trackage agreement is substantially the same as the trackage agreement in effect between the Chesapeake & Ohio and the Virginian from 1912 to 1917, under which the White Oak and the Piney River & Paint Creek were operated under lease jointly by the Chesapeake & Ohio and the Virginian.

The agreement of sale, and trackage agreement, provided that each carrier should have equal access to and from all mine operations then or thereafter located on the tracks mentioned. For purposes of economy the Chesapeake & Ohio arranged to serve certain of the mines located on its rails as agent for the Virginian, and the Virginian in turn agreed to place Chesapeake & Ohio cars at mines located on its rails. Each road retained the right to perform the service for itself in case complaint was made of the service performed by the other. Each of the mines is shown as being located on each of these roads and the rates are published as applicable by each.

The White Oak and Piney River & Paint Creek railways were constructed and owned by the New River Company. One additional mine covered by the complaint is served jointly by the Chesapeake & Ohio and the Kanawha, Glen Jean & Eastern. This latter line is not a defendant and no further consideration will be given to that mine.

The complainants contend that they have the right to order 100 per cent of their gross daily ratings from each of their connections in times of car shortage and that each road is obligated to serve each of the mines tributary to its rails without discrimination.

It is testified that in acquiring their properties the operators considered it to be essential to successful operation that they have connection with two trunk lines. With this object in view the New River Company built the railways mentioned. The operators of the Parker Run mine commenced operations with the assurance of a car supply from each railroad, one of which was then in contemplation. It is testified that the transportation facilities were a prime reason for the organization of the company. One of the complainants had the option of putting in a drift operation local to the Virginian or a shaft operation entailing a 3-mile extension from the Virginian which would permit of a connection with the Chesapeake & Ohio. It elected to pursue the latter course, and built at its own expense one-half of the extension and the Virginian built the other half in order that service might be obtained from both roads.

The efforts of the local-mine operators were directed mainly to showing that a greater percentage of cars were left over at joint mines than at local mines; that the capacity of the present sidetracks at joint mines would be insufficient to take care of the equipment if they were permitted to order their gross rating from each carrier; and the alleged advantage which the joint mine has by reason of being able to ship over the road having the greater car supply.

The Baltimore & Ohio contends that the rule in issue is fair and does not operate to the disadvantage of the joint mine, which has the advantage of being able to order cars from the line having the greater car supply. It is interested only to the extent of having rules which will operate equitably as between all shippers of coal situated on its rails, and which will assure the most expeditious handling of equipment.

The interveners operating local mines in the Fairmont and New River districts proceed on the theory that what complainants desire is to order cars on basis of 200 per cent of their maximum capacity to produce. This, however, is not the fact. Complainants' request, while theoretically based on the right to order 100 per cent from each carrier, is subject to restriction to its total mine rating.

The complainants further contend that the operation of the rule referred to amounts to a denial of car service to the complainants, and that the rule was issued solely as a war measure. This contention is not supported by the record. On the contrary, it appears that at the time of the adoption of Circular CS-31 no consideration was given to the length of time the rules were to be made operative, although the fact that the roads were being operated as a unit under federal control was a prime reason for the adoption.

The practical operation of the rule complained of is as follows: Mine A is a joint mine served by the Chesapeake & Ohio and Virginian; mine B is local to the Chesapeake & Ohio while mine C is local to the Virginian. Each has a daily rating of 20 cars. On a certain day the Virginian has a 70 per cent car supply, and the Chesapeake & Ohio a 50 per cent car supply. Mine A divides its order between the Chesapeake & Ohio and the Virginian; that is, it orders 10 cars from each carrier. Local mines B and C each orders 20 cars. As the car supply of the Chesapeake & Ohio is 50 per cent it would furnish mine A, with 5 cars while the Virginian, with a 70 per cent car supply, would furnish 7 cars, or a total of 12 cars from both roads. Mine B would receive 10 cars from the Chesapeake & Ohio, and mine C 14 cars from the Virginian.

The joint mines in the New River district, during the month of August, 1920, under the operation of the rule here complained of, received 1,392.6 cars from the Chesapeake & Ohio and 1,881.8 cars from the Virginian, or 167.3 cars more from the Chesapeake & Ohio and 48.2 cars less from the Virginian than they were entitled to. If they had been accorded a similar car supply as local mines with like ratings located on defendants' lines they would have received 2,104.9 cars from the Chesapeake & Ohio and 3,471.1 cars from the Virginian. These joint mines received 188.6 cars less on the Chesapeake & Ohio and 714.6 cars less on the Virginian than they would have been entitled to during the said month under the rule approved by us in the *Illinois Case*.

During 1920 cars left over at local mines on the Chesapeake & Ohio averaged 8.2 per cent of cars placed, while those left over at joint mines in the New River district averaged 11.4 per cent. The left-overs on the Virginian at joint mines were slightly in excess of the left-overs at local mines, due in part to the physical conditions on what was formerly the White Oak Railway. The Virginian operates over that line only in the daytime, and efforts are made to get sufficient cars to the mines the night preceding for the commencement of operations the following day. If cars are placed too late in the afternoon to be loaded they are reported as being left over. A witness for the Ches-

apeake & Ohio testified that the question of left-over cars was largely a matter of policing, and that if proper information were given to each railroad regarding the order and supply of cars there would be no occasion for cars being left over at joint mines to a greater extent than at local mines. This witness testified that rule 4 is defective in that it does not require that all lines serving joint mines be supplied with such information as would make over-ordering impracticable, and thus make full utilization of the empty equipment available from day to day.

The complainants concede that the railroads should exchange such information as will enable them to police left-over cars, and that very few joint mines have trackage facilities greater than their capacity to ship. No difference appears in the record in the latter respect between joint and local mines.

The interveners have filed in evidence a statement of competitive car supply on basis of equivalent number of full days worked by joint mines as against local mines in the New River district by months, for the period from March 1 to December 31, 1920, both dates inclusive. This statement shows that the joint mines worked 157.13 days and the local mines 123.78 days. An aggregate rating of the mines by each carrier is shown, together with the total cars supplied by each. The total cars supplied by both roads are divided by the average aggregate rating of both roads, and the result is shown as the equivalent of the number of full days worked. This statement is subject to the criticism that it takes the aggregate mine ratings rather than the number of cars ordered.

While it is true that the joint mine has an advantage by reason of its location on two railroads because of the additional markets which it can reach, it is likewise true that the joint mine is not always in a position to avail itself of its alleged advantage because of the practice in the coal business to make contracts for yearly periods beginning with April 1. Neither is it possible at all times for the joint mines to order all their cars from the carrier having the greater car supply, as its contracts may also require shipments to be made by the line having the lesser car supply in order to meet its current obligations. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater car supply.

In the *Illinois Case* we said:

Owners of junction-point mines have expended large sums in order to secure connections with more than one road. The junction-point mine has available a more extensive and more varied market for its coal. It may at times be able to dispose of its product upon the second line of railroad, while the mine local to the first road is unable to market its output. In case of car shortage the

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junction-point mine is able to select the outlet which affords the best and most liberal means of transportation. These are important advantages to which the junction-point mine is entitled and in the reasonable enjoyment of which it should be protected.

\* \* \* It would be unjustly discriminatory against the junction-point mine not to give reasonable recognition to its natural advantages of location.

We also stated that it was necessary, in order to avoid unjust discrimination in favor of the joint mine as compared with the local mine, to somewhat limit its power to assert its capacity against two or more carriers at the same time.

Following the views expressed in that case, and upon this record, we find that rule 4 of Circular CS-31, Revised, is unreasonable and unduly prejudicial to joint mines and unduly preferential of local mines, to the extent that it limits the aggregate orders of the joint mine to 100 per cent of its rating from both roads; and that for the future during periods of car shortage defendants should distribute cars to the joint mines on their lines here considered on the basis outlined in the *Illinois Case*, namely, on days when the joint mine orders cars from only one carrier it shall have cars based upon its full rating from that carrier, and on days on which it orders cars from both carriers its rating on each of such carriers shall be 75 per cent of its full rating, subject to the limitation that it shall on no day be supplied with cars in excess of its maximum rating. Information should be exchanged between carriers showing the left-over cars in order to prevent some of the abuses which have heretofore been pointed out.

Under paragraph 18 of section 1 of the interstate commerce act we are authorized by general or special orders to require all the carriers by railroad subject to the act to file with us from time to time their rules and regulations with respect to car service, and we may, in our discretion, direct that such rules and regulations be incorporated in the schedules showing rates, fares, and charges for transportation and be subject to any or all of the provisions of the act relating thereto.

We have not required that car service rules be filed as tariff schedules. We will not in this proceeding direct that the rules which we herein find to be reasonable be so filed. We shall expect, however, that defendants will promptly amend their car service rules so as to conform with our findings and evidence same by filing copies thereof with us.

INVESTIGATION AND SUSPENSION DOCKET No. 1811.  
PULP WOOD TO KINGSPORT, TENN., FROM SOUTH  
CAROLINA.

*Submitted May 5, 1921. Decided June 17, 1921.*

Proposed increased rates on pulp wood, in carloads, from points in South Carolina and Georgia on the Charleston & Western Carolina to Kingsport, Tenn., found not justified. Suspended schedules ordered canceled.

*Henry Thurtell* for respondents.

*T. T. Webster* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective March 21, 1921, it is proposed to increase the rates on pulp wood, in carloads, from points in South Carolina and Georgia on the Charleston & Western Carolina to Kingsport, Tenn., a point on the Carolina, Clinchfield & Ohio, 183 miles north of Spartanburg, S. C. Upon protest of the Mead Fibre Company, which operates a wood-pulp mill at Kingsport, the schedules were suspended until August 18, 1921.

The present rates are stated in amounts per cord, minimum 12 cords. Respondents' estimated weight per cord is 3,500 pounds. The minimum is therefore equivalent to 42,000 pounds. These rates range from \$3.365 to \$4.69 for distances varying from 194 to 417 miles. The proposed rates are stated in cents per 100 pounds and are based on a minimum of 40,000 pounds. For corresponding distances of 180-200 and 400-450 miles they range from 12.5 cents to 16 cents, the equivalents of \$4.375 and \$5.60 per cord.

The distance to Kingsport from Beech Island, S. C., a representative point of origin, is 323 miles. Based on the present minimum of 42,000 pounds and rate of \$4.22 per cord, equivalent to 12 cents per 100 pounds, the earnings are \$50.64 per car and 15.7 cents per car-mile. The ton-mile earnings are 7.43 mills. Based on the proposed rate of 15 cents per 100 pounds and minimum of 40,000 pounds the earnings would be \$60 per car and 18.6 cents per car-mile. The ton-mile earnings under the proposed rate would be 9.28 mills.

Protestant received approximately 2,400 carloads in 1920 and those received by it during the last few years averaged more than 60,000 pounds in weight. The present rate from Beech Island to Kingsport



would yield, if based on 60,000 pounds, \$72 per car and 22.3 cents per car-mile.

Respondents compare the proposed rates with those prescribed for application on logs between stations on the Southern in *Pierpont Mfg. Co. v. S. Ry. Co.*, 50 I. C. C., 81, and on hardwood logs from points in Mississippi to points in Tennessee in *North Vernon Co. v. I. C. R. R. Co.*, 61 I. C. C., 355. Neither case is pertinent. In the former we were dealing with hauls much shorter than those here under consideration, and in the latter with a commodity which is not comparable with pulp wood. Respondents also urge that the proposed rates compare favorably with those now in effect from points on the Seaboard Air Line and the Atlantic Coast Line to Kingsport.

The present rates are those which were in effect in 1916 augmented by the two general increases of 1918 and 1920. Pulp wood is a commodity of low value, moving under low rates, in large volume, in practically any kind of car, and is not liable to damage.

We find that respondents have not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

HALL, *Commissioner*, dissenting:

The proposed rates do not seem to me unreasonable. Compared with those which we prescribed in *Bare Paper Co. v. Director General*, 57 I. C. C., 329, since increased by 40 per cent in August, 1920, they are plainly reasonable.

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No. 11290.

## SPECIALTY DISPLAY CASE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ANN ARBOR  
RAILROAD COMPANY, ET AL.

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*Submitted January 19, 1921. Decided June 15, 1921.*

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Less-than-carload rating of double first class on show or display cases, counter or floor, within official classification territory found not unreasonable. Complaint dismissed.

*O. E. Elerick and E. L. Ewing* for complainant.

*D. P. Connell and L. P. Day* for defendants.

*F. W. Smith* for official classification lines.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

## BY DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner and the case was argued orally.

Complainant, a corporation engaged in the manufacture and sale of display cases at Kendallville, Ind., alleges that the official classification rating of double first class on less-than-carload shipments of "show cases, counter or floor (display cases, counter or floor), with glass fronts and with glass or wooden tops, backs or ends, N. O. I. B. N., S. U., in boxes or crates," is unjust and unreasonable when applied on display cases of certain smaller dimensions hereinafter described. On the latter we are asked to prescribe a rating of first class in official classification territory for the future.

The several styles of cases made by complainant are constructed of glass, and of glass and wood combined. They are sold principally to manufacturers and jobbers of small merchandise such as chewing gum, collars, collar buttons, cigar and cigarette holders, pipes, pens, pocketknives, razors, jewelry, and toothbrushes, and are used by the purchasers principally for display and advertising purposes.

Some years ago the Committee on Uniform Classification, as a result of an investigation of store fixtures, concluded that it would be impracticable to differentiate between the various kinds of show cases; and it recommended that all show cases under the above-quoted

description should be rated three times first class, as theretofore. The Official Classification Committee adopted this description, except that it changed the first word in the parenthesis from "display" to "show," thereby eliminating the small display cases from that description, and placed them back in the class of cases not otherwise specified, rated first class, as theretofore. In *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.*, 40 I. C. C., 484, wherein complainant asked ratings of double first class, one and one-half times first class, and first class for show cases, dependent upon dimensions of the shipping packages, we found that the less-than-carload rating of three times first class on "show" cases, set up, was unreasonable to the extent that it exceeded double first class, and expressed the opinion that the exception made by the Official Classification Committee in favor of the so-called "display" cases should be eliminated. Complainant states that the increase from first to double first class on display cases, following that decision, caused a reduction in its sales in eastern markets, where the principal manufacturers and jobbers of small merchandise are located, and practically restricted its market to Illinois, Indiana, and Ohio.

Complainant contends that the rating on small cases should not be as high as on large show cases, because the former have greater weight density and are more easily handled in transit. It urges that as show cases, knocked down, are rated first class, the smaller cases, although shipped set up, should not be rated higher, as they possess greater weight density. It is conceded that no distinction can be drawn on basis of phraseology, description or nature, quality, or type of articles, such as a differentiation between "display" and "show" cases, but complainant proposes that the line of demarcation shall be 60 united inches for the two greatest package dimensions, and asks that packages of 60 united inches or under shall be rated first class, those in excess thereof to remain rated double first class, as at present. This segregation would secure first-class rating for nearly all of complainant's product and for some of the products of other plants.

In shape, materials, and construction, complainant's so-called "miniature" show cases are similar to the large show cases. Complainant does not pack more than one case in a box or container; but a number of the packed containers are crated together, the crates being not more than about 3 feet square. It is also conceded that both the large and the small cases shipped by complainant are carefully packed and that the element of damage is negligible.

The main consideration underlying the contention of complainant is the greater weight density of the packed smaller cases as com-

pared with the larger ones. The secretary of the National Commercial Fixtures Manufacturers Association, the membership of which comprises, it is said, about 80 per cent of the manufacturers of show cases, submitted in evidence an exhibit indicating that the weights per cubic foot of cases exceeding 60 united inches packed, set up, produced by members of the association, range from 5 to 12 pounds, averaging from 6 to 8.2 pounds, and \$2.60 per cubic foot; knocked down, from 10 to 18 pounds, averaging from 12.2 to 14.2 pounds, and \$3.85 per cubic foot. He testified that cases of less than 60 united inches, which are usually shipped set up, range from about 10 to 20 pounds per cubic foot. Representative products of complainant's plant, packed, range in weight per cubic foot from 11 to 25 pounds, averaging from 13.4 to 17.6 pounds, and \$5.33 per cubic foot. The average density of the cases under 60 united inches, set up, appears to be as large as or greater than the average of the larger cases, knocked down.

Defendants direct attention to the increasing variety of so-called display cases, which have a wide range of values and weights per cubic foot. They assert that it is impracticable to predicate ratings on cases, show or display, set up, on basis of dimensions or weight density.

In *National Commercial Fixture Mfrs. Assn. v. A. A. R. R. Co.*, supra, we said:

After the hearing in this proceeding the defendant carriers, through the official committee, expressed themselves as satisfied that the present rating of three times first class should be reduced to double first class, and that the latter rating should be applied to the so-called "display" cases as well as the other show cases now specifically provided for.

Defendants state that this decision of the Official Classification Committee was influenced largely by the fact that after years of experiment no line of demarcation had been found which could be successfully drawn between the various sized cases.

Defendants urge that the granting of the relief sought would immediately provoke requests for similar reductions from manufacturers of cases the dimensions of which exceed the figure herein asked. They state that there is a wide range in the weight per cubic foot of the small cases, and that if complainant's contention for a lower rating on cases with a greater weight density were conceded it could then be urged with equal force that a still further differentiation should be made in the ratings of the smaller cases because of the great difference in their cubic density; in support of this contention they direct attention to the subjoined statement, prepared from information furnished by complainant, concerning

the largest and smallest cases manufactured by it for display of the articles enumerated:

Kind of cases.	Dimensions as packed for shipment.		Weight per cubic foot.	
	Small.	Large.	Small.	Large.
	<i>Inches.</i>	<i>Inches.</i>	<i>Pounds.</i>	<i>Pounds.</i>
Candy.....	10 by 10 by 18....	12 by 19 by 40....	13	19
Gum.....	13 by 19 by 19....	17½ by 19 by 35....	11.5	15.3
Collar buttons.....	4½ by 6½ by 8....	5 by 14 by 17....	25	14.5
Cigar and cigarette holders.....	7½ by 6 by 21....	Only 1 size.....	17.1	.....
Pens.....	5½ by 2½ by 10½....	22½ by 22½ by 25....	17.3	11.2
Razors.....	6½ by 2½ by 10½....	10 by 14 by 43....	17.2	12.6
Pocketknives.....	4½ by 6½ by 11½....	10½ by 17 by 31....	21.4	11
Jewelry.....	4½ by 6½ by 8....	17 by 17 by 45....	25	13.3
Collars.....	15 by 20 by 24....	16½ by 32 by 40....	14.6	11
Garters.....	10 by 14 by 15....	11 by 27 by 29....	15	13.6
Toothbrushes.....	9 by 16 by 32....	9 by 16 by 30....	12.5	14.8
Average.....	.....	.....	17.6	12.4

Upon this record we are not convinced that a difference in less-than-carload ratings on show, or display, cases should be prescribed on basis of the dimensions proposed by complainant; and we find that the rating assailed is not unreasonable.

The complaint will be dismissed.

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No. 11590.  
DETROIT PRODUCE ASSOCIATION  
v.  
DIRECTOR GENERAL, AS AGENT, AND MICHIGAN  
CENTRAL RAILROAD COMPANY.

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*Submitted March 16, 1921. Decided June 18, 1921.*

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Reconsignment charge on carloads of fresh or green fruits and vegetables within the Detroit switching district found applicable and not unreasonable or otherwise unlawful. Complaint dismissed.

*Beaumont, Smith & Harris and Thomas B. Moore* for complainant and interveners.

*L. P. Day* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

*AITCHISON, Commissioner:*

Complainant is an unincorporated association of commission merchants and produce dealers who are engaged in the buying and selling of fresh or green fruits and vegetables at Detroit, Mich. By complaint filed June 28, 1920, it alleges in behalf of its members that the charge of \$2 per car assessed by defendants on those commodities for services termed reconsignments, and performed within the Detroit switching district, was and is unlawful, unreasonable, unjustly discriminatory, and unduly prejudicial. The complainant asks us to prescribe reasonable and nondiscriminatory regulations, practices, and charges for the future, and to award reparation. At the hearing certain additional dealers, not members of complainant association, intervened and asked for reparation.

Complainant has listed over 200 cars of green fruits and vegetables upon which defendants have collected a reconsignment charge of \$2 per car. It assails this charge primarily on the ground that it is not justified under the tariff, and, secondly, that it is unreasonable in and of itself for a service which requires only the substitution of the name of the new consignee for the old one in the records of the carrier and involves no further movement of the car. Defendants state that the rule providing the \$2 charge permits movement of a shipment within the limits of the Detroit switching district, and

that some of the cars in question were in fact switched to new locations. As to the vast majority of the shipments, however, no further movement was required. The record shows that the right to reconsign, after the arrival of the car at Detroit, is frequently used by the fruit and produce dealers. If the request for the reconsignment is received prior to the arrival of the car in the Detroit switching district no charge is made.

Rule 1 (a) of the tariff, effective during the period of movement, under which the charge was assessed defines "Reconsignment" as

A change in consignee, a change in route, or a change in destination, made while a shipment is in transit to its billed destination; also if made after arrival at the billed destination, provided the change involves a movement beyond the billed destination. (See Rule 8.)

Rule 8 (c) to which in part reference is so made, and which is defendants' claimed authority for the assessment of the charges, is as follows:

A charge of \$2.00 per car will be made for reconsigning shipments billed to Detroit, Mich., when the reconsignment affects the name of the consignee or point of delivery (or both) within the Detroit Switching District and involves no movement beyond the Detroit Switching District, provided the request for the reconsignment is not received by the Michigan Central R. R. agents at Detroit, Mich., or Junction Yard (Detroit), Mich., prior to arrival of the cars in the Detroit Switching District.

Complainant contends that the above provisions do not authorize any charge where there was merely a change in the name of the consignee and no subsequent movement of the car. It urges that rule 8 (c) which names a charge of \$2 when the reconsignment affects the name of the consignee, must be read in connection with the definition of reconsignment in rule 1 (a) where it is stated that a change in consignee will constitute a reconsignment, provided the change involves a movement beyond the billed destination. Defendant relies upon the reference, "See Rule 8" at the end of rule 1 (a) which, it claims, constitutes an exception to and supersedes the general application of the rule requiring a further movement of the car. The latter construction appears to be the more natural and logical, and we are of the opinion that the charge assessed was applicable.

In support of its allegation of unreasonableness complainant maintains that the charge for the service of changing the name of the consignee was and is exorbitant for the amount of work involved. It claims that the only operation consisted in scratching out the name of the original consignee and writing in the name of another, and makes a comparison with reconsignments when notice was given to the carrier prior to the arrival of the car at destination, and in intraurban switching movements. Complainant maintains that the

amount of labor required in such cases, for which no charge is made, is the same as or more than that involved in the instant case.

The defendants produced testimony tending to show that no instance could be found of a car ever having been reconsigned while being switched in a local movement. It appears that much of the work of reconsigning is avoided when the orders are received prior to the arrival of the car at destination, while duplicate services are required if the orders are received subsequent to arrival of the car. Witnesses familiar with the work of reconsigning shipments for defendants testified that 10 enumerated steps were necessary in each transaction, which consumed in the usual routine about an hour and a half. Special "reconsignment clerks" are employed, and, if each transaction was followed through from beginning to end, a reconsignment could be effected in about one-half hour. The car is regularly inspected during the period of detention, and its contents must be protected by icing and from theft.

Defendants assert that an important factor in determining the charge for the service is the detention of the cars while awaiting reconsignment orders. Of the 243 cars in issue, complainants held 174 from 2 to 17 days after placement; on 39, they furnished reconsigning instructions to defendants within 24 hours; the records of the remaining 30 could not be traced from the information furnished by complainant. During the period July 19 to September 8, 1920, complainants detained cars for an average period of 5.13 days.

We may properly consider the question of car detention in this connection. In *Reconsignment and Diversion Rules*, 58 I. C. C., 568, we said:

Vigilant shippers are able to secure cars and to use reconsignment arrangements in such a way as to deprive the general public of the use of their fair share of available cars. To the extent that car shortage is brought about by improper detention through reconsignments the shipping public has a right to demand that we shall prescribe and the carriers observe such rules as shall insure the largest possible use of cars. To this end some restraining rules respecting reconsignment are justifiable.

During the fruit season there is a shortage of refrigerator cars, and they are delayed for a considerable time by dealers in fruit and produce at Detroit, awaiting disposition of the contents.

In *The Detroit Reconsigning Case*, 37 I. C. C., 274, decided December 18, 1915, we found not unreasonable a reconsigning charge of \$2 per car, which, under the terms of the tariff, was assessed "for any change in the billing as originally made affecting either consignee, destination, or delivery," except when reconsigning orders were received by the carrier's agents at Detroit or Junction Yard  
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(Detroit) prior to arrival of cars in the Detroit switching district. Such charges have been in effect at Detroit since that time.

Violations of sections 2 and 3 of the act are alleged. Complainant offered no substantial evidence to sustain these allegations or to prove any resulting damage to its members, and it will be unnecessary to discuss them.

We find that the reconsignment charge here complained of was applicable and that it was and is not unreasonable or otherwise unlawful.

The complaint and petitions in intervention will be dismissed.

62 I. C. C.

No. 11587.

ILLINOIS GLASS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS TERMINAL  
RAILROAD COMPANY, ET AL.

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*Submitted March 30, 1921. Decided June 14, 1921.*

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Charge for switching carload shipments of ground limestone, during federal control, within the city of Alton, Ill., found not unreasonable. Complaint dismissed.

*J. B. Hayes* for complainant.

*John F. Finerty* and *Alex. M. Bull* for Director General, as Agent.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing glass bottles at Alton, Ill., alleges that the charge of 40 cents assessed on 12 carloads of ground limestone switched between June 25 and November 20, 1918, from the plant of the Mississippi Sand Company on the tracks of the Chicago, Peoria & St. Louis at Alton to complainant's plant on the tracks of the Illinois Terminal in the same city, a distance of approximately 2 miles, was unreasonable to the extent that it exceeded the subsequently established charge of 30 cents. We are asked to award reparation. Charges are stated in cents per net ton.

Prior to June 25, 1918, the charge for this service was 20 cents. On that date it was increased to 40 cents under authority of general order No. 28 of the Director General of Railroads, and on November 20, 1918, it was reduced to 30 cents pursuant to freight-rate authority of the United States Railroad Administration.

Complainant's allegation of unreasonableness rests solely "on the fact that the increase to 40 cents was an error in the application of General Order No. 28." No evidence was offered to show that the rate charged was unreasonable. The Director General contends that the freight-rate authority referred to was intended as a modification of the general order and not as an interpretation thereof. The rate charged was applicable and even if it was established in error there is no proof that it was unreasonable.

Upon this record we find that the charge assailed was not unreasonable. The complaint will be dismissed.

No. 11849.

**EMPIRE COTTON OIL COMPANY**

v.

**DIRECTOR GENERAL, AS AGENT, SEABOARD AIR LINE  
RAILWAY COMPANY, ET AL.**

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*Submitted January 15, 1921. Decided June 15, 1921.*

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Rate on cotton seed, in carloads, from Henderson, N. C., to Dublin, Ga., found unreasonable. Reasonable rate prescribed and reparation awarded.

*Charles E. Cotterill* for complainant.

*Frank W. Gwathmey* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.**

**BY DIVISION 1:**

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued. We have reached a conclusion differing from that proposed by him.

Complainant, a corporation engaged in crushing cotton seed, by complaint filed March 29, 1920, alleges that the rate of 36.5 cents per 100 pounds charged by defendant on 30 carloads of cotton seed shipped during December, 1919, and January, 1920, from Henderson, N. C., to Dublin, Ga., was unjust and unreasonable. We are asked to establish a rate of \$5.50 per ton for the future, and to award reparation. Rates will be stated in cents per 100 pounds, unless otherwise indicated, and do not include the general increase authorized by us on July 29, 1920.

The shipments moved over the Seaboard Air Line to Vidalia, Ga., thence over the Macon, Dublin & Savannah, 507 miles. The rate charged was the applicable class-D rate governed by southern classification, in effect from the Virginia cities and intermediate points, including Henderson. Henderson is about 113 miles south of Richmond, Va., and 181 miles from Portsmouth, Va.

Complainant shows that it is customary for the Seaboard Air Line and other carriers throughout the south to maintain rates on cotton seed much lower than class-D rates between points where there is a regular movement, and that there is no fixed relationship between the rates on cotton seed and the class-D rates. The distance

rates on cotton seed between stations on the Seaboard Air Line in North Carolina, South Carolina, and Georgia east of Atlanta, Ga., and north of Savannah, Ga., but not including those points, and between stations on the Southern Railway in those states east of Atlanta, ranged from 9 cents for 25 miles to 19 cents for 500 miles. The distance scales of interstate rates on cotton seed maintained by the Southern Railway on certain other portions of its system, by the Atlantic Coast Line south of Charleston, S. C., and by the Nashville, Chattanooga & St. Louis provided rates for 500 miles of 26.5, 25.5, and 22.5 cents, respectively. The class-D rates for corresponding distances ranged from 4 to 100 per cent higher than the rates on cotton seed. Between stations on the Atlantic Coast Line north of Charleston, the rates on cotton seed were 6.5 cents for 25 miles and 18.5 cents for 350 miles. The class-D rates were 138 and 84 per cent, respectively, higher.

Complainant also cites a maximum commodity rate of \$4.70 per ton on cotton seed, applicable over the Seaboard Air Line from points in South Carolina and Georgia to the Virginia cities, 445 to 581 miles; the class-D rate of 27.5 cents from Henderson to Jacksonville, Fla., 527 miles; and specific commodity rates on cotton seed to Louisville, Ky., Chattanooga, Tenn., Augusta, Ga., Atlanta, and other points from stations on various lines in southern territory, which were materially lower, distance considered, than the rates attacked.

Complainant stated that prior to federal control the adjustment of rates on cotton seed was satisfactory and sufficiently comprehensive to cover the then existing movement, but that because of damage to the cotton crop, caused by boll weevil, it has become necessary for the mills to obtain cotton seed from more distant sources. The seed in question was a portion of the stock owned by a mill which had discontinued operation on account of the partial destruction of its plant by fire. Except the remaining portion of the stock shipped to Atlanta and Macon, Ga., and certain other points, it is not shown that other shipments of cotton seed have moved from Henderson. Various other shipments were made from points in the vicinity of Raleigh, N. C., and Fayetteville, N. C., and there is reason to anticipate a regular movement of cotton seed to Georgia mills from Carolina and other distant sections. The class-D rate of 84 cents was applicable on the shipments from Henderson to Atlanta, 465 miles, but the distance commodity rate to Milledgeville, Ga., the first station east of Atlanta, was only 19 cents.

A member of the Southern Classification Committee testified that while originally the class-D rating applied only on grain, it has applied on cotton seed for about 25 years, although cotton seed usually

moves on commodity rates; that when the rating was first established, cotton seed was practically a waste product; and that all other field and grass seeds are rated sixth class in southern classification.

Defendants compare the rate attacked with the class-D rates between points in neighboring territories for corresponding distances; with the commodity rates on bagging and grain from Henderson to Dublin and on peanuts from Georgia, Alabama, and Florida points to Charleston and Suffolk, Va.; and with commodity rates on cotton seed from points in Texas to points in Mississippi and Louisiana.

The joint class-D rate of 36.5 cents charged exceeded by 3.5 cents the aggregate of the intermediate rates to and from Columbia, S. C. Based on the approximate average weight of the shipments, 57,200 pounds, it yielded 41.1 cents per car-mile. The rate of \$5.50 per ton sought would yield about 31 cents per car-mile. In *Empire Cotton Oil Co. v. Director General*, 60 I. C. C., 661, a joint class-D rate of 34 cents charged on two carloads of cotton seed shipped from Pageland, S. C., to Atlanta, 369 miles, over the Chesterfield & Lancaster and the Seaboard Air Line in October, 1918, was found unreasonable to the extent that it exceeded \$4.50 per ton. The latter rate was 90 cents higher than the cotton seed commodity distance rate of the Seaboard Air Line for corresponding distances and yielded 32.5 cents per car-mile on the average weight of the shipments, 53,250 pounds.

We find that the rate assailed was unreasonable during the period of movement to the extent that it exceeded \$5.50 per ton of 2,000 pounds, and that for the future it will be unreasonable to the extent that it exceeds \$6.875; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

No. 11579.  
**PUSEY & JONES COMPANY**  
*v.*  
**DIRECTOR GENERAL, AS AGENT.**

*Submitted January 17, 1921. Decided June 15, 1921.*

Rate on refuse, bricks, dirt, excavated material, flue dust, sand, and slag, in carloads, from Midvale, Pa., to Gloucester, N. J., found to have been unreasonable. Reparation awarded.

*Chester N. Farr, jr.*, for complainant.

*Adams Dodson and J. C. Brooke* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

**By DIVISION 1:**

Exceptions were filed by defendants to the report proposed by the examiner, and oral argument was had.

Complainant is a corporation engaged in shipbuilding at Gloucester, N. J. By complaint filed June 29, 1920, as amended, it alleges that the sixth-class rate of 9 cents per 100 pounds charged for the transportation of 70 carloads of refuse, bricks, dirt, excavated material, flue dust, sand, and slag, hereinafter called refuse, shipped between July 15 and 22, 1918, inclusive, from Midvale (Philadelphia), Pa., to Gloucester, was unjust and unreasonable. We are asked to award reparation on certain shipments and to authorize waiver of undercharges on others upon basis of the subsequently established commodity rate of \$1.10 per net ton. Rates herein are stated in amounts per net ton unless otherwise indicated.

The refuse moved in gondola cars from Midvale over the line of the Pennsylvania Railroad to Fish House Junction, N. J., thence by the West Jersey & Seashore Railroad, a distance of 85 miles. Charges were collected at the applicable sixth-class rate of 9 cents per 100 pounds, but on 33 shipments were later improperly refunded to basis of the rate of \$1.10 per net ton. The rate applicable yielded 51.43 mills per ton-mile, and, based on an average loading of 95,000 pounds, \$85.50 per car and \$2.44 per car-mile. Prior to this movement the consignor applied for a reduction in the rate on refuse from Midvale to numerous points, including Gloucester. Complainant, the consignee, was in urgent need of the material, and the ship-

ments were made before the application for a lower rate was granted. Subsequently, on November 30, 1918, a commodity rate of \$1.10 was established from Midvale to Gloucester and other points.

Contemporaneously commodity rates were in effect from Midvale to Gloucester on refuse materials, such as street dirt, \$1, cinders and ashes, \$1.10, and a rate of \$1.10 on oyster shells to Glassboro, a point beyond Gloucester. Refuse and refuse materials are of very low value and useless for any purpose other than for filling in and grading.

Defendant contends that the movement here was an emergency movement and afforded no traffic basis for the establishment of a commodity rate. Attention was called to the fact that no traffic of this nature moved before or has moved since. For these reasons defendant maintains that the sixth-class rate was proper and reasonable.

In *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.*, 43 I. C. C., 1, which dealt with the movement under sixth-class rates of coal ashes, cinders, and foundry dirt, used for filling in land incident to construction work, we pointed out that movements of such material in large quantities are necessarily sporadic, due to the very purpose for which the material is used. Materials of this nature, it was said, rarely can move or do move on class rates. In that case, and in *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.*, 45 I. C. C., 479, where the commodity was slag and refuse used for filling and grading, we found that the sixth-class rates applicable were unreasonable and awarded reparation.

We find that the rate assailed was unreasonable to the extent that it exceeded the subsequently established rate of \$1.10 per net ton; that complainant paid and bore the charges on the shipments described; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice. Undercharges may be waived down to the basis of the rate herein found reasonable.

No. 11597.<sup>1</sup>

F. R. WOODBURY LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, DENVER & RIO  
GRANDE RAILROAD COMPANY, ET AL.

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*Submitted January 11, 1921. Decided May 2, 1921.*

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Rates on coal, shingles, and brick, in carloads, between points in Utah, Wyoming, Washington, Montana, and Idaho during federal control found not unreasonable. Complaints dismissed.

*J. B. Campbell* for complainants.

*H. A. Scandrett, W. A. Robbins, J. M. Souby, A. J. Laughon, L. B. Duponte, and L. R. Capron* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the reports proposed by the examiner. These cases are analogous and will be disposed of in one report.

Complainants are corporations engaged in business in the states of Washington, Montana, and Idaho. By complaints seasonably filed, as amended, they allege that the rates charged on various carloads of coal, shingles, and brick shipped between points in the states of Utah, Wyoming, Washington, Montana, and Idaho from June 25, 1918, to December 29, 1919, were unreasonable. We are asked to award reparation and, in No. 11599, to prescribe a reasonable rate on shingles, in carloads, from Kiro, Wash., to Council, Idaho. Requests for reasonable rates for the future in the other cases were withdrawn at the hearings. Unless otherwise indicated, rates are stated in cents per 100 pounds.

Except on one carload of coal from Kirby, Wyo., to Bozeman Hot Springs, Mont., which was undercharged 5 cents per ton, charges were collected at the applicable combination rates, established June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, each factor of the former combination rates having been increased in accordance with that order.

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<sup>1</sup> This report also embraces No. 11599, Council Lumber Company v. Director General, as Agent, Oregon Short Line Railroad Company, et al.; No. 11600, Gallatin Lumber Company v. Director General, as Agent, Chicago, Burlington & Quincy Railroad Company, et al.; and No. 11601, Potlatch Lumber Company v. Director General, as Agent, Chicago, Milwaukee & St. Paul Railroad Company, et al.



General order No. 28 provided that increases should be effected on coal rates by adding to each such rate in effect on June 24, 1918, certain specific amounts, dependent upon the base rate, as follows:

Where rate is 0 to 49 cents per ton, increase of 15 cents per net ton,

Where rate is 50 to 99 cents per ton, increase of 20 cents per net ton,

Where rate is \$1.00 to \$1.99 per ton, increase of 30 cents per net ton,

Where rate is \$2.00 to \$2.99 per ton, increase of 40 cents per net ton,

Where rate is \$3.00 or higher per ton, increase of 50 cents per net ton.

Where rates have not been increased since June 1, 1917, the increase to be made now shall be determined by first adding to the present rate 15 cents per ton, net or gross as rated, or if an increase of less than 15 cents per ton, net or gross as rated, has been made since that date, then by first adding to the present rate the difference between the amount of that increase and 15 cents per ton, net or gross as rated; and to the rates so constructed the above increases shall now be added.

Increases of 2 cents in rates on brick, of 25 per cent but not exceeding 5 cents on lumber and articles taking the same rates, and of 25 per cent in class rates were also authorized.

Prior to June 25, 1918, the rate on shingles, in carloads, from Kyro to Council was 47.5 cents, composed of a commodity rate of 35 cents from Kyro to Weiser and the class-E rate of 12.5 cents beyond. On that date these factors were increased to 40 cents and 15.5 cents, respectively. Effective September 28, 1918, under our special permission No. 47363, the rate from Weiser to Council was reduced to 13 cents. The rate charged, 55.5 cents, compares favorably with other rates referred to by defendants, applicable on the same commodity for similar distances. A rate of 52.5 cents, composed of the factors in effect prior to June 25, 1918, plus a single increase of 5 cents, is sought, and reparation to that basis is asked. The present rate, 66.5 cents is 1 cent more than the rate sought plus the increase authorized by us on July 29, 1920.

Complainants contend that the increases authorized by general order No. 28 should have been applied to the combinations, and not to each factor separately, and seek reparation to that basis. In support of that contention they refer to freight rate authority No. 10 of the Director General, dated July 2, 1918, which authorized readjustment upon that basis, and to the examiner's proposed report in *Pine Plume Lumber Co. v. Director General*, decided by us in 59 I. C. C., 371.

In that case, after stating that we had reached a conclusion differing from that proposed by the examiner, we said:

In the absence of any further proof in support of the allegations we think that the Director General should not be at peril of liability for reparation merely because a reduction in rates followed in the course of readjustments resulting from the original increases made under authority of General Order

Complainants introduced no further evidence of the unreasonableness of the rates attacked. Without attempting to determine whether or not general order No. 28 was strictly complied with, we observe that lack of such compliance would not establish unreasonableness of the rates affected. *Acme Cement Plaster Co. v. Director General*, 59 I. C. C., 411.

We find that the rates applicable to complainants' shipments were not unreasonable, and that the present rate on shingles, in carloads, from Kyro to Council is not unreasonable.

The complaints will be dismissed.

62 I. C. C.

No. 8180.<sup>1</sup>

A. H. KERR &amp; COMPANY ET AL.

v.

SAND SPRINGS RAILWAY COMPANY ET AL.

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*Submitted March 3, 1920. Decided June 14, 1921.*

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1. Former rates on glass fruit jars and jelly glasses, in carloads, from Sapulpa, Okla., and Hillsboro, Ill., to Pacific coast terminals and certain intermediate points, found not unreasonable but unduly prejudicial.
2. The undue prejudice found to exist as to those points of origin, and as to Sand Springs, Okla., in *Kerr & Co. v. S. S. Ry. Co.*, 40 I. C. C., 291, not shown to have been the proximate cause of any injury to complainants.
3. Supplemental complaint in No. 8180 and complaint in No. 10343 dismissed.

*Nuel D. Belnap, John S. Burchmore, and Luther M. Walter* for complainants in No. 8180.

*Edward A. Haid* for complainant in No. 10343.

*T. J. Norton, F. E. Andrews, James L. Coleman, and C. S. Burg* for defendants.

#### REPORT OF THE COMMISSION ON FURTHER HEARING.

POTTER, *Commissioner*:

These cases are essentially similar, reparation being the principal issue, and will be disposed of in one report. The present rate adjustment is not attacked. A report proposed by the examiner was served upon the parties in each case. Exceptions were filed by complainants in both cases, and oral argument was had in No. 8180.

In our original report in that case, *Kerr & Co. v. S. S. Ry. Co.*, 40 I. C. C., 291, decided June 23, 1916, we found that the relationship of rates there considered was unduly prejudicial to complainants, one a manufacturer of glass fruit jars and jelly glasses at Sand Springs, Okla., the other an Oregon corporation engaged in the distribution and sale of these articles, and unduly preferential of competing manufacturers at Muncie, Ind., Wheeling, W. Va., and Washington, Pa. This relation was a rate parity brought about by elimination of a differential of 10 cents per 100 pounds which had theretofore existed in favor of Sand Springs in rates to Pacific coast points. The elimination had been made effective on November 15, 1914, to California terminals, and on June 10, 1915, to north Pacific coast terminals. Rates to intermediate destinations were not dis-

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<sup>1</sup>This report also embraces No. 10343, *Schram Glass Manufacturing Company v. Director General, Atchison, Topeka & Santa Fe Railway Company, et al.*

cussed, as they are made with relation to the terminal rates. The original complaint was filed July 26, 1915. We said, page 294:

The record does not disclose that the former differential of 10 cents would be unreasonable. No order will be entered at the present time but defendants will be expected to readjust their rates in accordance with the views here expressed within 60 days from the service of this report, failing which the matter may again be brought to our attention for appropriate action.

That period expired September 18, 1916. The differential was not reestablished until December 1, 1917.

Thereafter complainants filed a supplemental complaint praying reparation on numerous carload shipments, made in competition with producers at Muncie and elsewhere, between the date of service of that report and the effective date of the readjustment. After hearing thereon the supplemental complaint was dismissed upon a finding that the evidence did not definitely establish either the fact or the amount of damage. 52 I. C. C., 287. In view of the existing circumstances we stated in that report that the defendants were not chargeable with undue delay in making the readjustment. The case was again reopened, on complainants' petition, for further hearing "as to the fact and measure, if any, of damage attributable to rate adjustment," and is before us on an amplified record. Rates throughout this report will be stated in amounts per 100 pounds.

The complaint in No. 10343 was filed November 4, 1918, by the Schram Glass Manufacturing Company, a Missouri corporation which manufactures glass fruit jars, fruit-jar caps, and jelly glasses at Hillsboro, Ill., and at Sapulpa, Okla., a few miles from Sand Springs. This complainant assails as unreasonable and unduly prejudicial the rates effective on June 10, 1915, and seeks reparation on the basis of the former differentials on carload shipments from Hillsboro and Sapulpa to the Pacific coast and points intermediate thereto moving after the expiration of the 60-day period designated in our original report in No. 8180, and prior to December 1, 1917. The history of these rates, using Muncie as representative of the three competing eastern points, is as follows:

	Oct. 10, 1910.	Nov. 15, 1914.	May 6, 1915.	June 10, 1915.	Dec. 1, 1917.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
To north Pacific coast terminals from—					
Sapulpa, Okla.....			75	75	85
Hillsboro, Ill.....			80	75	90
Muncie, Ind.....			85	75	95
To interior coast points from—					
Sapulpa, Okla.....			80	80	85
Hillsboro, Ill.....			85	80	95
Muncie, Ind.....			90	80	100
To Spokane, Wash., and Columbia River points from—					
Sapulpa, Okla.....			80	80	85
Hillsboro, Ill.....			85	80	95
Muncie, Ind.....			90	85	100
To California terminals from—					
Sapulpa, Okla.....	75	85	.....	75	85
Hillsboro, Ill.....	85	85	.....	75	90
Muncie, Ind.....	85	85	.....	75	95

Hearing was had in No. 10343 but, as in No. 8180, the case was assigned for further hearing, and has again been heard, "on the question of fact and amount, if any, of damage attributable to the rate adjustment."

The only change made in the rates from Sapulpa on June 10, 1915, was a reduction in the rate to California terminals. The rates from Sapulpa in effect on and after June 10, 1915, were the same as those from Sand Springs which we found not unreasonable in our original report in No. 8180, and the Sapulpa rates were affected to the same extent by the relationship found by us in that report to be unduly prejudicial to Sand Springs. The rates from Hillsboro were reduced on June 10, 1915, to the Sand Springs basis and applied for greater distances. The witness for complainant in No. 10343 admitted that the rates from Sapulpa and Hillsboro in effect during the reparation period were not unreasonable *per se*, and should be higher from Hillsboro than from Sapulpa. After December 1, 1917, and prior to June 10, 1915, except on traffic to California terminals, the rates from Hillsboro were fixed differentials under those from Muncie, Wheeling, and Washington, and complainant's Hillsboro plant competed with the eastern manufacturers in this Pacific coast trade.

As shown in the foregoing table, equal rates applied from Hillsboro and Muncie to California terminals from October 10, 1910, to December 1, 1917. Upon the latter date the rate from Hillsboro to California terminals was made 5 cents less than the rate from Muncie. The failure of the defendants to make the rate from Hillsboro to California terminals lower than the rates from the eastern plants, during the period when they were maintaining rates from Hillsboro upon a lower basis than from the eastern plants to other western destinations, is not explained of record. In the original report in No. 8180 our finding of undue prejudice against Sand Springs and undue preference of the eastern plants was based in large measure on the disparity of transportation services from the respective points of origin and the advantage of location enjoyed by Sand Springs on westbound traffic. Similar considerations support the view that Hillsboro was entitled to a lower rate to all the destinations in question than the eastern plants.

Upon consideration of the record in No. 10343 we are of opinion and find that the rates assailed during the period in question were not unreasonable, but that they were unduly prejudicial to Sapulpa and Hillsboro and unduly preferential of Muncie, Wheeling, and Washington. As the relationships between the rates that have been in effect since December 1, 1917, are not under attack, and in view of the conclusion reached herein upon the question of reparation, it

is not necessary to determine the extent of the undue prejudice to Sapulpa and Hillsboro.

#### REPARATION.

Complainants in both cases allege that they have been damaged by reason of the prejudicial rate relationships in amounts measured by the proper differentials between the respective rates from Sand Springs, Sapulpa, and Hillsboro, on the one hand, and Muncie, Wheeling, and Washington, on the other. We have repeatedly held that complainants seeking reparation because of unlawful discrimination must prove damage by the same sort of evidence as would be required in a court of law. The fact of damage can not be presumed from the ascertained existence of unjust discrimination under section 2 or undue prejudice under section 3 of the interstate commerce act; nor is the amount of any damage that may have resulted therefrom necessarily measured by the difference in rates. In each case it must be proved that the complainant has suffered actual pecuniary damage as a direct and proximate result of the unlawful discrimination or prejudice, and the amount of the damage must be established with reasonable certainty by definite facts, without resort to conjecture, speculation, or unsupported opinion. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184; *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226; *Brooks Coal Co. v. Wabash R. R. Co.*, 39 I. C. C., 426; *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32.

Complainant A. H. Kerr & Company commenced to manufacture fruit jars at Sand Springs in 1914. Complainant in No. 10343 began operations at its Sapulpa plant in 1913. Approximately 20 factories were making fruit jars in 1900, but in keen competition their number has been reduced to the two manufacturing complainants here; the Ball Brothers Glass Manufacturing Company and the Ball Brothers Glass Company, owned by the same interests, with plants at Muncie and at Wichita Falls, Tex., respectively, and the Hazel-Atlas Glass Company, manufacturing at Wheeling and Washington and having fruit jars made for its account at Blackwell, Okla., which are complainants' principal competitors; and a manufacturer of fruit jars at San Francisco, Calif. The principal competitors have a decided cost advantage in the exclusive use of patented machines, produce more than complainants, and at their eastern plants are nearer the sources of supply of raw materials. It is admitted that these advantages far outweigh complainants' rightful advantage in freight rates.

A large part of complainants' product is sold in the far west. They meet the competition of each other and of all other manu-  
62 I. C. C.

facturers but the principal competition is with the eastern plants which, it was stated, are able to control the prices to a great extent. The complainants are not alone concerned in the relationship of the rates, but also in their measure. Thus they assert in substance that if the rate of \$1 from Sand Springs and Sapulpa and correspondingly higher rates from the eastern producing points published in November, 1916, but suspended by us and later canceled, had become effective, the complainants' ability to successfully compete with the San Francisco manufacturer would have been seriously impaired. During the reparation period the rates applied on fruit jars, in carloads, from San Francisco to representative Pacific coast points were:

To Seattle, Wash.....	40 cents.
To Portland, Oreg.....	20 cents.
To San Diego, Calif.....	25 cents.

A few contracts of sale, said to be typical, entered into by complainants during the fall of 1916 with jobbers at prices guaranteed against decline of complainant's or competitors' prices were introduced in evidence in No. 10343. From these and other exhibits it appears that, upon being advised by such jobbers that "competitors" had quoted prices substantially less than those named in the contracts, complainant reduced its contract prices to the same figures. In only one instance was the competitor named. Complainants' witness in No. 8180 asserted that it was their policy to meet their competitors' prices when possible during the period in question. As to individual shipments, however, except in the few instances in No. 10343 above mentioned, the complainants did not show with what companies, if any, they actually competed in making the sales nor what specific prices, if any, they were compelled to meet. Neither could they say whether the Muncie competitor advanced its prices after the increases in the rates on December 1, 1917. The complainants did not establish that the controlling competition was with the eastern plants.

In substance, three propositions form the basis of complainants' contentions that they have been damaged: (1) that the selling prices which they were forced to meet at destination were fixed by their competitors, especially by the one at Muncie; (2) that competitors' prices were based upon cost of production, plus profit, plus freight rates; and (3) that timely increase of those freight rates by the amounts of the former differentials would, of necessity, have been reflected in a corresponding enhancement of competitors' selling prices, since the freight rate was a factor in those prices, with the result that complainants, through increased prices, could and would have taken the amounts of the differentials as additional profits.

These propositions do not appear to give due weight to the fact that complainants had to meet important competition other than of the eastern plants; that the Muncie competitor also operated a plant at Wichita Falls, and the Wheeling-Washington competitor had fruit jars manufactured for its account at Blackwell, both of which points have since May 6, 1915, taken the same rates as Sand Springs and Sapulpa; that the factory at San Francisco had much lower rates to this destination territory than either complainants or their eastern competitors; that the complainants' plants at Sand Springs and Sapulpa were in competition with each other and that the plant at Sand Springs was in competition with the plant at Hillsboro. Complainants admit that they meet the competition of all other manufacturers and frequently of each other, yet they insist that they have been damaged to the extent of the former differentials under Muncie, Wheeling, and Washington. They concede to their principal competitors a rightful advantage in materially lower production cost, enabling those competitors to reduce prices out of all proportion to the former differentials, but claim that their own rightful advantage in freight rates entitles them to damages and fixes the measure of such damages, on the theory that no matter what their eastern competitors' production cost advantage was, the delivered prices that they made, and which the complainants were compelled to meet were based in part upon freight rates and always reflected in full the advantage which the eastern plants had by reason of the unduly preferential rate adjustment. Complainants' assumption that their eastern competitors' delivered prices were based upon production cost plus a reasonable profit plus the full freight charges is founded merely upon a comparison of the prices quoted by competitors for delivery at various points.

It is shown of record that early in 1915, 18 months before the reparation period, the Muncie manufacturer reduced its price on quart fruit jars by 75 cents per gross at all these destinations. A witness for complainants in No. 8180 at the first hearing in December, 1915, ascribed that reduction to a determination on the part of their chief competitor to keep them out of the desirable Pacific coast market which complainants were then entering. At that time a parity of rates from the producing points here under consideration existed only on traffic to California terminals, but there is a substantial movement to north Pacific coast terminals and points intermediate thereto. It is obvious that the elimination of the 10-cent differential, which would amount to 17 cents per gross, between the rates from Sand Springs and Sapulpa on the one hand and Muncie on the other, to California terminals only, did not enable the Muncie competitor to cut its price 75 cents at all destinations.



Neither are the comparatively low prices quoted by complainants' competitors in the fall of 1916 in any way traceable to the freight rates, since no change was made in the rates between June, 1915, and December, 1917.

There is evidence to the effect that prices fluctuated from time to time and were met by complainants, but it is not shown that the Muncie or other competitors made advances or reductions in prices coincident with or conforming to the changes in freight rates. Neither is it established that, if the undue prejudice had been removed by an increase of the rates from the eastern plants, it would in any way have affected the complainants' competition.

It is clear that complainants in the cases before us proceed upon the theory that, having met the prices of their competitors, they were necessarily and automatically damaged in amounts measured by the former rate differentials under Muncie, Wheeling, and Washington, notwithstanding their assertion that such prices were chiefly based upon much lower production costs and that to meet them they were compelled to shrink their profits, sometimes considerably more than the amount represented by those differentials. Recognition of such a theory would be contrary to the binding rule in the *International Coal Co. Case*, *supra*, which requires affirmative proof of the fact and amount of damage.

Complainants cite several cases as supporting their contentions, of which *Mebius & Drescher Co. v. Central California Traction Co.*, 42 I. C. C., 599, is representative. In those cases, in which the rates charged complainants were prejudicially higher than those charged their competitors, the maladjustments were responsible for the ability of such competitors to control the selling prices to complainants' injury.

We find that complainants in the cases here under consideration have not shown that the undue prejudice found by us to have existed, was the proximate cause of any injury or disadvantage to them.

An order dismissing the supplemental complaint in No. 8180 and the complaint in No. 10343 will be entered.

COMMISSIONERS McCHORD and EASTMAN dissent.

COMMISSIONER CAMPBELL did not participate in the disposition of this case.

No. 11584.

T. W. KEESEE &amp; COMPANY

v.

MISSOURI PACIFIC RAILROAD COMPANY AND  
DIRECTOR GENERAL, AS AGENT.

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*Submitted January 16, 1921. Decided June 15, 1921.*

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Combination rates applicable to shipments of cotton from Marianna and Forrest City, Ark., cotton-compress points, to Helena, Ark., for compression, and shipment thence to New Orleans, La., and Boston, Mass. and points taking the same rates, not found to have been or to be unreasonable, and present adjustment not found otherwise violative of the act. Complaint dismissed.

*M. W. Martin* for complainants.

*Henry G. Herbel* and *James M. Chaney* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

McCHORD, *Commissioner*:

No exceptions to the examiner's proposed report have been filed in this case, and upon the record made we adopt his conclusions as far as material to the disposition of the case.

Complainants are engaged in the business of buying and selling cotton at Helena, Ark. By complaint filed June 21, 1920, they allege in effect that the rates on cotton from Marianna and Forrest City, Ark., concentrated and compressed at Helena and reshipped to New Orleans, La., and Boston, Mass., rate points were and are unreasonable and, with relation to the rates on like shipments from the same points of origin compressed at Memphis, Tenn., and reshipped to the same destinations, unduly prejudicial to the extent that they have exceeded or may exceed the joint rates from the originating points to the final destinations. We are asked to award reparation on shipments made in 1919 and 1920 and to require that provision be made for such concentration at Helena on the basis of the joint through rates. Rates and differences hereinafter stated are per 100 pounds, and do not include the general increases authorized July 29, 1920.

During the period of the shipments in question cotton from Marianna and Forrest City, compressed at Memphis and reshipped

to New Orleans or Boston, in each instance paid 15 cents less than the combination rates to and from Memphis. No similar arrangement was available at Helena and complainants were charged the full local rates to and from that point. Specifically, the complaint assails the rates inbound to Helena on the ground that there was and is no provision for refunds, upon shipments outbound after compression, down to bases sufficient to protect the joint through rates. The Missouri Pacific Railroad Company, which made the inbound haul, is the only defendant carrier. The advantage to complainants' competitors at Memphis is reflected in the subjoined table, which is compiled from exhibits of record:

To—	From Marianna.				From Forrest City.			
	Distance.	Out-of-line haul.	Rate prior to Dec. 24, 1919.	Rate on Dec. 24, 1919.	Distance.	Out-of-line haul.	Rate prior to Dec. 24, 1919.	Rate on Dec. 24, 1919.
	Miles.	Miles.	Cents.	Cents.	Miles.	Miles.	Cents.	Cents.
Helena, Ark.....	25		<sup>1</sup> 33	<sup>1</sup> 33	43		<sup>1</sup> 30	<sup>1</sup> 30
Memphis, Tenn.....	51		45	45	61		36.5	36.4
Boston, Mass.....	<sup>2</sup> 313		91.5	96	<sup>2</sup> 295		91.5	96
Boston via Helena.....	<sup>2</sup> 363	50	113.5	128.5	<sup>2</sup> 381	86	119.5	129.5
Boston via Memphis.....	<sup>2</sup> 378	65	<sup>2</sup> 104	<sup>2</sup> 114	<sup>2</sup> 388	98	<sup>2</sup> 95.5	<sup>2</sup> 105.5
Memphis over Helena.....			9.5	9.5			24	24
New Orleans, La.....	480		60	60	498		62	62
New Orleans via Helena.....	501	21	81	86	519	21	87	92
New Orleans via Memphis.....	581	101	<sup>2</sup> 72	<sup>2</sup> 77	591	98	<sup>2</sup> 63.5	<sup>2</sup> 68.5
Memphis over Helena.....			9	9			23.5	28.5

<sup>1</sup> Local Arkansas distance tariff rates.

<sup>2</sup> Shipments to Boston move through St. Louis, and the distances shown are to that junction.

<sup>3</sup> Memphis combination less 15 cents.

It will be seen that the sum of the rates to and beyond Helena exceeded the net through rates contemporaneously in effect on like traffic handled through Memphis, although greater distances and longer out-of-line hauls are involved in the latter movements. Defendants explain that the arrangement at Memphis was inaugurated during federal control, apparently for the purpose of providing a means whereby, on cotton from eastern Arkansas and south-eastern Missouri, one of the 15-cent advances made under general order No. 28 in the rates to and beyond Memphis could be refunded. That arrangement expired August 31, 1920, and any undue prejudice to Helena and advantage to Memphis which existed prior to that date was thus removed.

The local Arkansas distance tariff rates were charged on the shipments into Helena, and in support of their allegation that these rates were unreasonable complainants exhibit lower rates contemporane-

ously maintained throughout Arkansas and Louisiana for hauls of comparable distances from noncompress stations to points where concentration privileges are accorded. They also compare the intrastate distance rate of 39 cents for 43 miles from Forrest City to Helena with the interstate rate of 36.5 cents for a distance, by way of the defendant carrier's line, of 61 miles to Memphis. The latter rate, however, is predicated upon the short-line distance of 44 miles via the Chicago, Rock Island and Pacific Railroad. No showing is made concerning the rates outbound from Helena or the in-and-out rates in the aggregate, except to disclose the advantage formerly enjoyed by Memphis.

The privilege of concentrating cotton from Marianna and reshipping it to Boston or New Orleans on basis of the joint through rates was permitted at Helena prior to September 21, 1916. On August 25, 1920, the differences between the joint through rates and the Helena combination rates to Boston and New Orleans were, respectively, 27.5 and 26 cents from Marianna, and 28 and 30 cents from Forrest City. Complainants assert that unless the concentration arrangement is established at Helena they will be forced to remain out of the Marianna and Forrest City markets, but that with the benefit of that arrangement Helena will draw between 15,000 and 20,000 bales per year from those points.

Approximately 70,000 bales of cotton are handled at Helena during an average year, of which about 20,000 bales represent the business of complainants, who control one of the largest Helena compresses. That the storage facilities at Helena are superior to those at Marianna and Forrest City is reflected in the insurance rates per \$100, on stored cotton, of \$3.15 at Marianna and \$2.65 at Forrest City, compared with 47 cents on cotton stored in complainants' fire-proof compartment warehouse, equipped with protective sprinkler devices.

The defendant carrier objects to establishing at Helena the transit arrangement sought by complainants for the reasons that (1) it is its policy not to encourage the movement of uncompressed cotton from points on its line where compresses are located to or through other compress points; (2) no compress point in Arkansas or Louisiana west of the Mississippi River now enjoys a similar privilege on cotton from other compress points; (3) back hauls would be necessary, involving a serious waste of transportation; (4) the loading capacity of cars is increased at least 50 per cent by compression, and to move uncompressed cotton out of compress points would mean an uneconomical use of equipment; (5) Helena now enjoys concentration privileges on cotton from a territory as large as, or greater than, that apportioned to any other compress point in eastern

Arkansas; (6) the compresses at Marianna and Forrest City would be deprived annually of approximately 15,000 to 20,000 bales of cotton produced in the immediate vicinity of those points; (7) it would be inequitable to allow to Helena the privilege of concentrating cotton from Marianna and Forrest City when a similar privilege is not accorded those points on cotton from Helena.

There is no attempt of record to prove pecuniary damage as a result of undue preference of Memphis, if any, during the period of complainants' shipments, and Helena now appears to be on equal terms with other compress points on the defendant carrier's line.

While the rates from Marianna appear to represent increases which resulted from the cancellation in 1916 of the former arrangement at Helena, the same is not true in the case of Forrest City, and the cancellation in turn appears to have corrected an exception to the defendant carrier's policy not to accord the transit basis on cotton drawn from or through compress points for compression at other points on its line. In that connection it is shown of record that each such compress point has a substantial area from which uncompressed cotton may be drawn. Considered apart from the former advantage of Memphis, complainants do not seriously contend that the assailed in-and-out rates were or are unreasonable for the through transportation, inclusive of four terminal services and apparently requiring the use of two or more cars inbound to one car of compressed cotton outbound. The through routes and distances to Boston are not shown, but, referring to the foregoing table, the Helena combinations to New Orleans, 86 cents from Marianna for 501 miles, and 92 cents from Forrest City for 519 miles, yielded approximately 3.43 and 3.55 cents per ton-mile, respectively.

We conclude that upon the facts of record the rates assailed could not be found to have been or to be unreasonable or the present adjustment to be otherwise violative of the act, and the complaint will be dismissed.

Complainants seek restoration of the sixth-class any-quantity rating on common soap in less than carloads, subject to a released valuation. As this would tend to disrupt the desired identity in description for the three classification territories, they are willing that like provision as to released value be made in connection with the ratings in official and western classifications.

Intervenors concede the propriety of carload and less-than-carload ratings, but remind us that they suggested fifth class as a proper rating for less than carloads in the *Consolidated Classification Case*, 54 I. C. C., 1.

The position taken by defendants is that soap should be classified on a carload and less-than-carload basis; that ratings based only on value offend correct classification principles, value being but one of many elements to be considered; that both the sixth-class any-quantity rating, and the sixth-class carload and fourth-class less-than-carload ratings which superseded it, are lower than they should be; that defendants have adopted the suggestions made in connection with the *Consolidated Classification Case*, *supra*, although they maintain that the proper ratings would be fifth class for carloads and third class for less than carloads, as proposed by the carriers in that case; and that the fourth-class rating established results in reductions on soaps of a value greater than 20 cents per pound. Complainants' witness testified that the latter constituted 18 per cent of the tonnage. Defendants introduced an exhibit, compiled from the record in the case last cited, from which it appears that soap ranges in value from 5.9 cents to \$1.54 per pound.

Practically no common soap is manufactured south of the Ohio River, and that territory draws its supply chiefly from points in the east and middle west, of which New York, Cincinnati, Louisville, Chicago, and Kansas City are representative. Taking Louisville as typical in the basing structure of rates to the south and southeast it appears that, generally, class rates apply to all points in western Kentucky, western Tennessee, Mississippi, western Alabama, southern Virginia, North Carolina, South Carolina, and a few points in northwestern Florida. To all other points in the southeast the rates are commodity rates except that in Florida they apply only as far south as Jacksonville. The traffic to that portion of Florida lying south of the line of the Seaboard Air Line running west from Jacksonville moves on a combination of the commodity rate to Jacksonville and the class rate beyond. The structure of rates from Cincinnati, St. Louis, Chicago, and New York to this destination territory is substantially the same as from Louisville. The great bulk of the soap moving into southern Virginia, North Carolina, South Carolina, central and eastern Georgia, and Florida originates at

points in trunk line territory and the southern classification governs. There is, however, some movement into the southeast from points in central territory. Kentucky, Tennessee, Alabama, Mississippi, and northwestern Georgia are supplied mainly from factories on the Ohio River, in central territory, and at Kansas City. On traffic from this producing territory, generally, the southern classification governs only that portion of the movement south of the Ohio River, but in the case of shipments from Chicago to Mississippi common points the southern classification governs the entire movement.

The less-than-carload tonnage of soap in the south is heavier than in official and western territories and the hauls are longer. From a transportation standpoint soap is a desirable commodity, and as packed is conveniently loaded in the same car with other less-than-carload shipments. Loss-and-damage claims are negligible.

Any-quantity ratings are usually made in contemplation of some movement in car lots. Complainants' witness testified that the carlot soap traffic, which comprises approximately 25 per cent of the tonnage, is generally accorded commodity rates in the southeast, and that the former sixth-class any-quantity rating applied only to a few isolated car-lot shipments so that, in substance, sixth class was then a less-than-carload rating.

Complainants lay great stress on the increase in rates which resulted from increase of the rating to fourth class in less than carloads. They introduced voluminous exhibits bearing upon the measure of the rates resulting from the application of that rating from such representative soap-producing points as Cincinnati, Louisville, St. Louis, Chicago, and New York to points served by two or more lines of railroad in each state in the southeast. These exhibits indicate that the increases were greater to destinations covered by class rates than to those enjoying commodity rates, and substantial as compared with rates in effect prior to January 1, 1916. Defendants' witness testified that the destinations listed in the exhibits are common or basing points, and include so-called water-competitive points; that because of water and carrier competition rates to those points were lower than they would have been otherwise; and that in a majority of instances they were formerly lower than to intermediate local points. In the revision effective January 1, 1916, following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the rates to the intermediate points were brought down to the level of the basing-point rates, although this was done in some instances after the latter had been increased, thus resulting in drastic reductions in rates to the intermediate points. If these rates were included, the average of the increases, it is said, would have been considerably lower.

Complainants compared the fourth-class less-than-carload rating on soap with ratings in southern classification on other household necessities, such as salt, sugar, coffee, sirup, rice, and flour, rated fifth or sixth class, and also with various other articles rated fourth or fifth class, the latter including many of a bulky or perishable nature, some of greater value than soap. Many of these compared ratings are still on an any-quantity basis. Complainants refer to the existence in southern territory of over 4,500 any-quantity items, many of which were instanced in the *Consolidated Classification Case* as properly susceptible of being split into carload and less-than-carload items, but still continue on an any-quantity basis. On this subject we said on December 1, 1920, in our thirty-fourth annual report to the Congress, and referring to that case—

The southeastern lines are endeavoring to gradually eliminate adjustments made in the past as occasion arose to meet conditions that do not now prevail. This has particular reference to any-quantity ratings that have characterized and continue to prevail in the southern classification. As rapidly as consistent these are apparently being resolved into carload and less-than-carload ratings, in the light of each individual case.

Defendants contrasted the rating on soap with the fourth-class rating on carbonate of soda, borax, and liquid soap, and with ratings on groceries, canned goods, and other articles rated fifth class in carloads and third class in less than carloads. Their witness testified that many of these articles were less or no greater in value per pound than soap; less or no greater in susceptibility to damage in transportation; greater or approximately the same in density; or less or no greater in risk as measured by susceptibility to damage together with the total liability assumed. They assert that canned fruits and vegetables are the articles most nearly comparable with soap in transportation characteristics and give the result of tests conducted by the southern weighing and inspection bureau, which shows the average weight per cubic foot of canned goods to range from 40 to 55 pounds and of soap from 25.9 to 61 pounds. The minimum carload weight for each is 36,000 pounds.

Defendants also contrasted the rating assailed with ratings on various articles used as ingredients in the manufacture of soap, such as lye, lime, grease, oils, and oil sediment, some of which are rated third class in less than carloads. They contend, therefore, that the finished product should take no lower rating.

There remains the allegation that the rating assailed is illegal because it is an increase filed with us before January 1, 1920, without our prior approval as then required by section 15. Fifteenth section applications were not filed to cover consolidated classification No. 1. No approval from us under that section was necessary as  
621. C. C.



to lines under federal control. The increase in rating was incident to and necessary for the change in description made by eliminating value as the sole determinative of rating in the southern classification and by substituting a carload and less-than-carload basis for the any-quantity basis then observed in that classification, so as to bring about identity of description in all three classifications. In *Consolidated Classification Case*, at page 71, we approved such increases in rating as were necessary and incident to changes in description. No further approval by us was or is necessary for the lines not then under federal control. Reference to our approval was made in supplement No. 1 to consolidated classification No. 1, effective on the same date as the classification. We are of opinion that the change in rating was necessary and incident to the change in description.

Upon consideration of the record we find that the fourth-class rating in southern classification on soap, soap powders, and washing, cleansing, and scouring compounds, in less than carloads, was not and is not unreasonable or illegal. The complaint will be dismissed.

COMMISSIONER AITCHISON dissents.

No. 11737.  
E. M. WILHOIT OIL COMPANY ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted April 15, 1921. Decided June 23, 1921.*

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Rates charged for the transportation of petroleum products from Joplin, Mo., to certain destinations in the same state not found unreasonable. Complaint dismissed.

*S. C. Bates* for complainants.

*John F. Finerty, M. G. Roberts, and Alex. M. Bull* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCHORD, MEYER, AND AITCHISON.

**MEYER, Commissioner:**

No exceptions were filed to the report proposed by the examiner.

Complainants are corporations engaged in the refining of crude oil and in the sale and distribution of petroleum products. By complaint, filed August 17, 1920, it is alleged that the carload rates charged on shipments of petroleum products from Joplin, Mo., to certain destinations in the same state during the period from June 25, 1918, to March 1, 1920, were unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reparation only is asked. Rates hereinafter are stated in cents per 100 pounds.

The destinations are in southwestern Missouri on the Missouri Pacific and St. Louis-San Francisco railways, the latter hereinafter being designated the Frisco. The most distant destinations are Butler on the Missouri Pacific and Ash Grove on the Frisco, 95 and 104 miles, respectively, from Joplin.

Prior to November 1, 1906, petroleum and its products moved intrastate in Missouri on fifth-class rates. Effective on that date the Railroad and Warehouse Commissioners of Missouri established a scale of commodity rates. In 1915, application was made by the carriers for an increase in those rates to the class-rate basis. This the Public Service Commission of Missouri denied, but it established, effective June 1, 1917, a scale of commodity rates which were in some instances higher and in others lower than the scale formerly fixed by the Railroad and Warehouse Commissioners. Defendants point out

62 I. C. C.

that the rates in the 1917 scale were approximately 50 per cent of the class rates, notwithstanding the fact that the commission in its report stated that commodity rates on oil in the southwest were generally about 70 per cent of the class rates. On June 25, 1918, the rates on all petroleum products rated fifth class were increased 25 per cent under general order No. 28 of the Director General of Railroads. Various associations of shippers of petroleum, of which complainants were not members, represented that the 25 per cent increase would work to the detriment of a large number of refiners, and on July 11, 1918, a flat or specific increase of 4.5 cents over the rates in effect June 24, 1918, was authorized by the Director General. The resulting increases ranged from less than 25 per cent over the June 24, 1918, rates on long-haul traffic to 100 per cent on some short-haul traffic. It was estimated that the advance of 4.5 cents would yield an increase in revenue of approximately 25 per cent. Flat or specific increases were made in rates on a number of commodities by general order No. 28, in the effort of the Railroad Administration to meet operating expenses. The 4.5-cent increase became effective August 7, 1918, on the Missouri Pacific, and December 18, 1918, on the Frisco.

The same mileage scale is applicable over each line, and where the Missouri Pacific has the longer haul it does not meet the short-line rate of the Frisco. The rates in effect June 24, 1918, and as increased 25 per cent and by 4.5 cents, are shown in the following table:

From Joplin to—	Railroad.	Distance.	Rate June 24, 1918.	Rate June 25, 1918.	Rate June 24 increased 4.5 cents.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cartersville.....	Frisco.....	6	4.5	5.5	9
Webb City.....	Missouri Pacific.....	7	4.5	5.5	9
Do.....	Frisco.....	6	4.5	5.5	9
Carthage.....	Missouri Pacific.....	17	5.5	7	10
Do.....	Frisco.....	18	5.5	7	10
Lamar.....	Missouri Pacific.....	39	6.8	8.5	11.5
Monett.....	Frisco.....	50	7.3	9	12
Aurora.....	Missouri Pacific.....	57	7.8	10	12.5
Do.....	Frisco.....	63	8	10	12.5
Nevada.....	Missouri Pacific.....	64	8	10	12.5
Mount Vernon.....	Frisco.....	75	8.5	10.5	12
Republic.....	do.....	80	8.8	11	12.5
Rich Hill.....	Missouri Pacific.....	83	9	11.5	12.5
Springfield.....	Frisco.....	93	9.5	12	14
Do.....	Missouri Pacific.....	102	10	12.5	14.5
Butler.....	do.....	95	9.5	12	14
Ash Grove.....	Frisco.....	104	10	12.5	14.5

It is complainants' contention that the rates charged on shipments of the refined oils subsequent to August 7, 1918, over the Missouri Pacific, and subsequent to December 18, 1918, over the Frisco, were unreasonable to the extent that they exceeded the rates in effect June 25, 1918; and that the rates charged on shipments of distillate and fuel oil since June 25, 1918, were unreasonable to the extent that they exceeded 80 per cent of the rates on refined oils.

In addition to the destinations involved in this proceeding, complainants shipped oil to points in Kansas, Nebraska, and Iowa, and received the benefit of the increase of 4.5 cents on long-haul traffic, which increase was less than 25 per cent over the rates in effect June 24, 1918.

Complainants compared the rates here in issue with rates on petroleum products between several points on defendants' lines in Missouri, Kansas, and Nebraska, showing greater earnings per car-mile and per ton-mile under the rates charged. The rates compared are, however, in most instances for much greater distances. They also compared the rates on oil with rates on other commodities and urge that the shipments of oil paid more than their fair share of revenue compared with other commodities.

Illustrating that the Missouri oil rates were below the general level of rates in that vicinity, defendants submitted several exhibits from which the following has been excerpted:

Rates.	5 miles.	25 miles.	50 miles.	75 miles.	100 miles.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Missouri intrastate.....	8.5	10.5	12	13	14.5
Oklahoma intrastate.....	10	12	14.5	17	19.5
Frisco: Oklahoma to Texas.....	12.5	17.5	22	26.5	30.5
Hutchinson, Kans., to Oklahoma.....	9.5	15.5	19.5	24.5	28.5
Kansas and Missouri to Arkansas and Missouri.....	9	19	31.5	36.5	.....
Kansas to Missouri.....	7.5	12.5	19	25	34
Oklahoma to Arkansas, Kansas, and Missouri.....	9	16.5	22.5	29	35

Defendants showed that the rates assailed were equal to or less than rates from Cincinnati to certain points in central freight association territory. The rates found reasonable in *Petroleum to Kentucky Stations*, 43 I. C. C., 35, from Cincinnati, Ohio, and Louisville, Ky., to Kentucky points, and in *National Petroleum Asso. v. M., K. & T. Ry. Co.*, 47 I. C. C., 353, applicable from Kansas refining points to certain points in Oklahoma, as increased under general order No. 28, were shown by defendants to be higher than the rates here under attack. The rates prescribed in the latter report constitute the basis of the scale applicable to all Oklahoma destinations.

The rates established by the Missouri commission were considerably lower than the rates prescribed by the Corporation Commission of the State of Oklahoma, which were held to be confiscatory by the federal court on March 15, 1918. Defendants insist that 80 per cent of the refined-oil rate is too low for fuel oil, and suggest that the difference in rates should be based entirely on difference in weight, and that as refined oil weighs 6.6 pounds per gallon, and fuel oil 7.4 pounds, the rate on fuel oil should be 89 per cent of the refined-oil rate. They concede that rates on fuel oil are, and gen-

erally should be, less than rates on the refined products, but urge that the rates charged on shipments of fuel oil here in issue were not unreasonable. They maintain that the refined-oil rates here under consideration were not sufficiently high. If the Oklahoma scale on refined oil were applied in Missouri, and the fuel-oil rates were made with a proper relation thereto, defendants submit that the fuel-oil rates would be as high as the rates applicable in Missouri.

Defendants object to lower rates on distillates than on the refined oils. They disapprove of a difference in rates based on the degree of distillation. In refining crude oil, gasoline, kerosene, and gas oil are extracted in the order named, and the residuum is fuel oil, which is not vaporized. Complainants concede that gasoline, kerosene, and gas oil could properly be termed distillates. As the prices of distillates are based on specific gravity, complainants suggest that freight rates be established on a similar basis.

Defendants stress the fact that on July 20, 1918, the United States Fuel Administration permitted an increase of 0.5 cent a gallon in the wholesale market price of gasoline, naphtha, and refined oil, effective July 22, 1918. The authorization notice states: "The reason for this advance is the recent increase in railroad rates throughout the United States."

We are of the opinion and find that the rates assailed were not unreasonable. The complaint will be dismissed.

No. 10357.<sup>1</sup>

## SEABOARD BY-PRODUCT COKE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, DELAWARE, LACKAWANNA &amp; WESTERN RAILROAD COMPANY, ET AL.

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*Submitted September 23, 1919. Decided June 28, 1921.*

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1. Rates on coke, in carloads, from Seaboard, N. J., to various points in New England, New York, and New Jersey found unreasonable and unduly prejudicial. Reasonable maximum and nonprejudicial rates prescribed and reparation awarded.
2. Through routes and joint rates from Seaboard to points on the New York, New Haven & Hartford Railroad by way of New York harbor denied.
3. Fourth section relief denied.

*Arthur B. Hayes and James R. Schurz* for complainant.*J. L. Seager, Clyde Brown, Duane E. Minard, and C. M. Sheafe, jr.,* for defendants.*Francis B. James, E. E. Williamson, Ewing H. Scott, and William G. Rich* for Providence Gas Company; and *Frank Lyon* for Empire Coke Company, interveners.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

These cases present substantially similar issues and were consolidated for hearing and disposition, except No. 10842 and No. 10843 which will be separately considered. Exceptions to the report proposed by the examiner were filed by intervener Empire Coke Company and by defendants.

Complainant, a corporation manufacturing by-product coke at Seaboard (Kearney), N. J., by complaints filed on various dates from December 10, 1918, to August 19, 1919, both inclusive, alleges that the rates on coke, in carloads, from Seaboard to all destinations on the New York, New Haven & Hartford, hereinafter termed the New

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<sup>1</sup> This report also embraces No. 10370, Seaboard By-Product Coke Company v. Director General, as Agent, et al.; No. 10371, Same v. Director General et al.; No. 10886, Same v. Director General, as Agent, et al.; No. 10395, Same v. Director General, as Agent, et al.; No. 10414, Same v. Director General, as Agent, et al.; No. 10449, Same v. Director General et al.; No. 10485, Same v. Director General, as Agent, et al.; Portions of No. 10842, Same v. Director General, as Agent, et al.; No. 10843, Same v. Director General, as Agent, et al.; and Portions of Fourth Section Application No. 1625.

Haven, the Central New England, Delaware & Hudson, Boston & Maine, Central Vermont, New York Central, West Shore, Boston & Albany, and Rutland railroads in the states of New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine, and all destinations on the West Shore in New Jersey, Weehawken and north, were and are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and just and reasonable joint rates for the future are sought. Our jurisdiction over the intrastate rates assailed, except under circumstances not here presented, is limited to cases falling within section 206 (c) of the transportation act, 1920. Rates will be stated in amounts per net ton and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The Providence Gas Company, a corporation manufacturing coke at Harbor Junction Wharf, near Providence, R. I., intervened and was represented at the hearing. The Empire Coke Company, a corporation manufacturing coke at Geneva, N. Y., intervened after the hearing, but requested that the case be disposed of on this record.

The alleged undue prejudice is based upon a comparison of the Seaboard rates with rates to the same territories of destination from competing coke-producing districts in Pennsylvania and West Virginia, and from Camden, N. J., Solvay and Geneva, N. Y., and Boston and Everett, Mass.

The principal controversy is as to the rates and routes to New England. Coke from the Connellsville region of Pennsylvania has long held a commanding position in the markets of the east and the rates from that region have largely controlled the rates from other producing districts. The Connellsville region comprises the Gallitzin, Latrobe, and Connellsville districts, from which the rates to so-called Boston rate points, including all points in Connecticut, Rhode Island, and Massachusetts, the lower part of New Hampshire, and Portland, Me., were originally \$3.10, \$3.30, and \$3.50, respectively. Rates to the east from West Virginia were made lower than from the Connellsville district and this relationship was approved in *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125. When rates on coke from Camden came up for consideration the New Haven demanded the same divisions as it received out of the Gallitzin rates, which was finally agreed to by the lines serving Camden, and rates \$1 per ton less than from Gallitzin were established. South Bethlehem, Pa., was later given the same basis of rates.

Complainant's plant was opened for operation in August, 1917. As Camden, South Bethlehem, and Seaboard were in the Philadelphia rate group of points originating traffic destined to New England, Seaboard was given the same rates as the other two. The rate

from these points to Boston rate points, as increased in accordance with *The Fifteen Per Cent Case*, 45 I. C. C., 303, and under general order No. 28 of the Director General of Railroads, is \$2.90, and thus \$1.10, \$1.30, \$1.50, and \$1.25 respectively, less than the Gallitzin, Latrobe, Connellsville, and West Virginia rates.

Appendix A, compiled from complainant's exhibits, presents comparisons of the rates on coke from Seaboard and the principal competing points or districts to representative destinations, and the revenue per ton-mile which those rates yield. Distances over the routes of movement are given.

Complainant's plant has track connections with the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, and the Erie. Its traffic to New England generally moves over the Erie to Campbell Hall, N. Y., or over the Lackawanna to Port Morris, N. J., and the Lehigh & Hudson to Maybrook, N. Y. From Campbell Hall and Maybrook it moves over the Central New England, a part of the New Haven system, crossing the Hudson River over the bridge at Poughkeepsie, N. Y. For convenience these routes will be referred to as the Poughkeepsie route. Coke for New England from Connellsville, Camden, and South Bethlehem is received by the New Haven at the New Jersey float bridges of the Pennsylvania, Lehigh Valley, or Central of New Jersey, and moves through New York harbor. The New Haven does not now interchange by car float in New York harbor with either the Erie or the Lackawanna.

Complainant contends that it is not given the benefit of its geographical location. Its nearest competitors are at Camden and South Bethlehem, 89 and 88 miles from Jersey City, respectively. Over the routes of movement the distances from Seaboard to Campbell Hall and Maybrook are 69 and 108 miles, respectively. Complainant insists that its distances should not be measured over the Poughkeepsie route, but, like those of its competitors, over the harbor route, and asks us to require defendants to establish for its traffic to New England a through route or routes by way of the harbor. A better understanding of the contentions may be had by reference to Appendix B.

Formerly all through traffic for New England arriving in New York from the west over the Pennsylvania, Lehigh Valley, Central of New Jersey, Erie, and West Shore was floated through the East River to the Harlem River terminal of the New Haven. The increasing congestion of traffic through the East River caused the Erie and West Shore in 1898 to discontinue using the harbor route in favor of a route via Newburgh, N. Y., in connection with a car ferry across the Hudson River at Fishkill landing. The New Haven then commenced to transport over the harbor route traffic received from the



Lackawanna. This became unsatisfactory to the Lackawanna, and in 1905 it diverted its traffic to the Poughkeepsie route. In the same year the car ferry at Fishkill was abandoned and the traffic of the Erie was diverted to the Poughkeepsie route. Later an arrangement was entered into between the New Haven and the Central of New Jersey whereby all traffic originating on the latter road and its connections west of Allentown, Pa., was diverted to the Poughkeepsie route.

In recent years the New Haven has opened a new freight terminal at Oak Point, a short distance east of the Harlem River terminal, and now practically all of its through freight traffic crossing the harbor is floated to Oak Point. An additional route has been established by way of the Greenville piers of the Pennsylvania, car float to Bay Ridge, Long Island, Long Island Railroad to Fresh Pond Junction, Long Island, and New York Connecting Railroad to Port Morris. The last-named road is owned jointly by the Pennsylvania and New Haven and is a part of the new route for passenger traffic from the Pennsylvania station in New York by way of the East River tunnel to Long Island and the bridge over the East River at Hell Gate.

Defendants' witnesses testify that the Bay Ridge route was established to relieve the congestion through the East River and at the float bridges at Harlem River and Oak Point and was intended only for through traffic; that on account of operating difficulties, including inadequate yard facilities at Bay Ridge and a long tunnel on the Long Island between Bay Ridge and Fresh Pond Junction, it can not be depended upon for a large freight movement; that these harbor routes must be maintained but are objectionable because the float service is expensive and unreliable, affected by tides, winds, fogs, and ice, subject to interruption on account of labor troubles, and necessitate the exercise of great care in transferring cars to and from the floats; and that frequently during the past few years, because of the difficulties of the harbor routes, it has been necessary to temporarily divert traffic to the Poughkeepsie route. Defendants insist that any increase in the freight movement through the harbor is open to serious objection and that further reduction is much to be preferred. They express the opinion that a constructive mileage at least equal to the actual mileage from Seaboard to Maybrook, 108 miles, should be allowed for the movement through the harbor. They do not base this opinion upon any engineering or operating data of record. The estimate does not seem unreasonable.

The New Haven does all the floating of through traffic and will not permit the floats of other lines to enter its float bridges.

Complainant asks that its traffic for New England be handled by float from the Lackawanna terminal at Hoboken or the Pennsylvania

piers at Greenville by way of Oak Point, Bay Ridge, or Long Island City. The route over the Lackawanna to its Hoboken terminal, about 3 miles, includes a tunnel under the city of Hoboken; that to Greenville necessitates a movement westward over the Lackawanna to Kearney Junction and over the Pennsylvania southward to Waverly Yard and eastward to Greenville, a total distance of 16 miles. Complainant contends that the difficulties of the harbor routes have been magnified by defendants and points out that its prospective traffic to New England amounts to only about five carloads daily. It has not shown or claimed that the movement by way of the harbor is more expeditious, and apparently its only interest in asking for such a route is to secure the shortest possible distance as a basis for constructing rates to New England. Distance over the harbor route has little, if any, relation to distance over the Poughkeepsie route, and the difficulties encountered in moving traffic through the harbor and the congestion at the terminals are manifest.

We are of opinion and find upon the record before us that the routing of complainant's traffic by way of Poughkeepsie was not and is not unreasonable, and that defendants should not be required to establish and maintain through routes and joint rates on such traffic by way of New York harbor.

Complainant performs the terminal service at its plant. The Erie and Lackawanna deliver empty cars and receive loaded cars at interchange tracks adjoining their main tracks. Nearly all shipments move in open cars. The average loading is 31.75 net tons. Complainant contrasts the terminal service on its traffic with that given shipments originating in the Connellsville region, as described in *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, *supra*, where we said at page 128:

The conduct of the coke traffic was detailed with great particularity, which it is hardly necessary to repeat in detail. Suffice it to say that it involves gathering the coke from the ovens on branch lines, concentrating it at assembling yards, classifying and weighing it, hauling it to main distributing yards, from which it is forwarded to destinations east or west, and delivering it at the several furnaces or mills. The cars are practically all returned empty to the ovens. In gathering the coke from the ovens, and returning the empties severe grades are encountered. The transportation involves an unusually large proportion of switching service.

Complainant contends that the spread between the rates from Seaboard and from Pennsylvania and West Virginia producing districts is insufficient.

The principal competition met by complainant in the New England market, aside from that of the Connellsville region, comes from plants at Everett and Harbor Junction Wharf. Everett is a few  
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miles from Boston and is served by the Boston & Maine and Boston & Albany. In 1914, the New Haven established rates from Boston for the Everett coke on a mileage zone basis, all destinations distant 125 miles or more being blanketed. The plant at Harbor Junction Wharf commenced shipping more recently, and upon its request for readjustment of rates the carriers decided to give this plant and that at Everett the same distance scale. Tariffs providing rates from Harbor Junction Wharf upon a progressive scale, hereinafter termed the Providence scale, for distances up to 325 miles, became effective February 26 and March 3, 1919. A similar revision in the rates from Boston has not been made, although it was testified that the New Haven intended to establish the Providence scale to and from all points on its line.

Complainant encounters some competition from coke produced at Geneva, but at the time of the hearing the production at that point was less than 300 tons per day, most of it used for domestic purposes in near-by territory. Coke was formerly produced at Solvay, just outside of Syracuse, N. Y., but the record indicates that shipments from that point have been discontinued. Defendants' witnesses testified that the rates from these points, as well as from Everett and Harbor Junction Wharf, were made with primary regard to the competition of Connellsville coke.

Coke from Seaboard to points in northern New York on the New York Central moves over the Lackawanna to Utica, N. Y., or Syracuse, mostly to Syracuse. The rates were fixed on the basis of the Lackawanna's rate from Solvay to Hoboken and the New York Central's rates from Solvay to these destinations. Rates from Seaboard to points on the Delaware & Hudson were established for a movement over the Erie to Binghamton, N. Y., but the traffic now moves over the Erie to Newburgh and the New York Central to Schenectady, a route 193 miles shorter to Schenectady and points north thereof. Defendants admit that the rates over the Newburgh route should be substantially lower than by way of the Erie to Binghamton.

Seaboard traffic commenced to move before rates in harmony with those from other points of production could be provided. Defendants' witnesses admitted inconsistencies and errors in the rates attacked and testified that the general situation was under investigation. Since the hearing the rates from Seaboard to many points on the West Shore, Central New England, New York Central, Boston & Maine, Delaware & Hudson, and Central Vermont have been reduced, but the grouping of destinations has not been changed. For example, the blanket rate of \$3.80 was reduced to \$3.10 to most points on the Boston & Maine in Massachusetts, and to \$3.50 to more distant

points in that state and to points in New Hampshire. To destinations on the Delaware & Hudson the rates as reduced range from \$2.50, to points on the Schenectady branch, to \$3.30 to the most distant points. These reduced rates compare with the rates from Harbor Junction Wharf, and with those that would apply from Everett under the Providence scale, as follows:

To—	From Seaboard.		From Harbor Junction Wharf.		From Everett.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Worcester, Mass.....	252	\$2.90	52	\$1.40	48	\$1.80
Bridgeport, Conn.....	174	2.90	129	2.10	166	2.20
Springfield, Mass.....	224	2.90	108	1.90	102	1.90
Pittsfield, Mass.....	188	2.90	166	2.20	154	2.20
Burland, Vt.....	316	3.30	187	2.30	207	2.70
Burlington, Vt.....	353	3.30	254	2.60	264	3.00
Troy, N. Y.....	182	2.90	214	2.40	210	2.40
Albany, N. Y.....	146	<sup>1</sup> 2.30	208	2.40	204	2.40
Schenectady, N. Y.....	168	<sup>1</sup> 2.30	225	2.40	221	2.40

<sup>1</sup> New York Central delivery. The rate for Delaware & Hudson delivery is \$2.50.

Complainant also compares the Seaboard rates with those from the Connellsville region to various destinations. The latter, found reasonable in *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, *supra*, and increased under authority of *The Fifteen Per Cent Case*, *supra*, and general order No. 28, yield earnings materially less than those under the Seaboard rates for comparable distances. Complainant further compares the Seaboard rates with distance rates from coke ovens on the Buffalo, Rochester & Pittsburgh to Delaware & Hudson points, and with rates from Buffalo, N. Y., Detroit, Mich., Portsmouth, Ironton, and New Boston, Ohio, Ashland, Ky., and the Gallitzin district to various destinations in Ohio, Pennsylvania, New Jersey, Indiana, and Illinois. Such comparisons carry little weight when unsupported, as here, by any showing of the transportation conditions attendant upon the rates used for comparative purposes, but it may be noted that all are on a lower basis, and some on a materially lower basis, than the Seaboard rates.

The Providence scale provides rates the same as or slightly higher than those from Gallitzin to points in New Jersey and eastern Pennsylvania for equal distances, materially lower than the distance rates of the Delaware & Hudson, and higher than the other rates with which comparison of the Seaboard rates is made.

Complainant proposes a scale of distance rates from Seaboard much lower than the Providence scale, or in lieu thereof a scale on the block system substantially equivalent to the distance scale. Defendants contend that these proposed scales are too low and dis-

regard the high operating costs of the New England lines; that in making class and commodity rates from trunk line territory to New England large territorial groupings of points of origin and destination have long been observed; that these groupings should not be disturbed; and that if either of these proposed scales is adopted a reduction in rates from the territory farther west would result because of the relationship of the rates to each other. But it is shown that in making class rates to New England from a small territory adjoining the west shore of the Hudson River these groupings have not been observed, the rates therefrom being on a lower level than from the territory farther west. Defendants' fear in this respect would not be well founded if the Providence scale applied from Seaboard, as, measured by that scale and allowing constructive mileage for such traffic as is routed through New York harbor, the present rates from Camden and more distant competing points are not greatly out of line. The Providence scale and the distance scale proposed by complainant are compared in Appendix C with the sixth-class rates prescribed in *Proposed Increases in New England*, 49 I. C. C., 421, for application on class-A roads.

The application of the Providence scale to Seaboard traffic would result in substantially lower rates, as illustrated by the following comparison, in which car-mile earnings are based upon a loading of 32 tons:

Seaboard to—	Distance.	Effective Aug. 25, 1920.			Providence scale.		
		Rate.	Ton-mile earnings.	Car-mile earnings.	Rate.	Ton-mile earnings.	Car-mile earnings.
	Miles.		Mills.	Cents.		Mills.	Cents.
Bridgeport, Conn.....	174	\$2.90	16.7	53.4	\$2.20	12.6	40.3
Hartford, Conn.....	205	2.90	14.1	45.1	2.40	11.7	37.4
New London, Conn.....	234	2.90	12.4	39.7	2.50	10.7	34.2
Springfield, Mass.....	234	2.90	12.9	41.3	2.40	10.7	34.2
Boston, Mass.....	318	2.90	9.1	29.1	2.80	8.8	28.2
Albany, N. Y.....	146	2.80	15.8	50.6	2.10	13.7	43.6
Syracuse, N. Y.....	253	2.80	9.9	31.7	2.70	9.5	30.4
Watertown, N. Y.....	324	3.20	9.9	31.7	2.80	8.6	27.6
Ogdensburg, N. Y.....	366	3.40	9.3	29.8	3.00	8.2	26.2
Port Henry, N. Y.....	262	3.10	11.8	37.9	2.60	9.9	31.7
Standish, N. Y.....	353	3.30	9.3	30	3.00	8.6	27.6
Manchester, N. H.....	339	3.30	10	31.2	2.90	8.6	27.6
Portland, Me.....	424	3.80	9	28.8	3.20	7.5	24

At the hearing defendants stated their purpose to apply the Providence scale from Everett and thus give each point the benefit of its geographical location. As yet they have not done so. Seaboard, which competes in the same territory and may be considered a marginal New England point, is also entitled to the benefit of its geographical location. To insure this, the Seaboard rates should be constructed in the same manner as those from Everett and Harbor Junction Wharf.

The Providence scale, extended to 600 miles, was recommended by the examiner in his proposed report for application from Seaboard. Complainant filed no objection to the measure of these rates. Defendants do not object to them in so far as applicable to single-line hauls, but contend that for hauls over two or more lines, hereinafter for convenience called joint-line hauls, the rates should be increased 20 cents per ton. This would result in an increase in all the rates, as joint-line hauls are necessary in order to reach any of the destinations here considered. They further contend that the minimum weight should be 50,000 pounds when open cars are used. Complainant's average loading has been 63,500 pounds.

The Providence scale is applicable to both single and joint line hauls, but defendants' witness testified that through inadvertence a provision for 20 cents per ton additional for joint-line hauls was not included in the freight rate authority under which the rates were established. The class scale prescribed in *Proposed Increases in New England, supra*, does not differentiate between single and joint line hauls. In that case we said, at pages 457 and 458:

Rates for joint hauls in New England have not been constructed on any consistent basis. The class B lines impose no extra charge for joint hauls on class B lines, while the class A lines usually publish higher rates for joint hauls than for single line hauls, but even in this case no definite principle is followed in constructing the joint rates. In central freight association territory the zone rates apply to joint hauls as well as to single line hauls, and if it be proper to transfer a part of the central freight association adjustment to New England it is logical to expect the lines in New England to make their joint rates on the same basis as that now prevailing in central freight association territory.

In *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523, we said, at page 551:

The mere fact that one haul is a two line haul, as distinguished from another haul, which is a one line haul, does not in and of itself justify a higher charge for the two line haul. \* \* \* The reasonableness of a higher charge for a two line haul than for a one line haul is a question of fact rather than a question of law, and depends solely on the facts and circumstances made to appear which show an increased cost or some other fact or circumstances which would warrant a higher charge.

It does not appear that in transporting coke from Seaboard to the destinations here considered any unusual or costly service is performed by defendants solely because a joint-line haul is necessary. The record does show that complainant performs the greater part of the initial terminal service usually performed by carriers.

The Empire Coke Company excepts to the application of these rates from Geneva for single-line hauls, but offers no objection to their application for joint-line hauls. It contends that over 99 per cent of its coke is marketed at points on the New York Central, a one-

line haul. The movement to nearly all of these destinations is intrastate. On brief, complainant acquiesces in the position taken by this intervener.

Five of the complaints include claims for reparation on shipments to points on the New Haven and Central Vermont over the Poughkeepsie route, and to points on the New York Central, West Shore, and Delaware & Hudson, made between August 14, 1917, and January 21, 1918, inclusive. The variety of rates charged on shipments to the same point over the same route, as shown by the record, indicates an undeveloped condition of the tariffs at that time. For example, shipments over the Erie and Delaware & Hudson to Troy were charged \$2.50 and \$3.59 per ton; over the Erie and New York Central to Poughkeepsie \$1.80 and \$2.25; over the Erie and Central Vermont to Norwich \$2.845, \$3.65, \$4.832, and \$6.15. On three shipments to Pawtucket in August, 1917, routed over the Lackawanna and New Haven and the Poughkeepsie route, a rate of \$3.60 was charged, but a joint rate of \$2.25 was made effective February 1, 1918. Complainant's witness testifies that during this period freight charges on its traffic were prepaid, with the understanding that adjustment would be sought later.

The determination of a proper level of rates requires some form of general treatment. The examiner recommended that reparation be awarded upon the basis of 80 per cent of the rates prescribed for the future, distances over the routes of actual movement to govern, except where shipments were misrouted by the carrier, in which case the shortest workable route should be used. This reduction of 20 per cent was suggested in recognition of general increases on similar traffic since the shipments moved, and as reflecting an approximately just relationship to rates on like traffic then effective in the same territory. No exceptions were taken to this recommendation.

Upon this record we are of opinion and find that the rates applicable to coke in carloads shipped from Seaboard over all-rail routes to the territories of destination here considered were, from August 14, 1917, to January 21, 1918, inclusive, unreasonable and unduly prejudicial to the extent that they exceeded 80 per cent of the rates shown in the following distance scale; and, except to points on the West Shore in New Jersey over intrastate routes, are and for the future will be unreasonable and unduly prejudicial to the extent of their excess over the rates shown in the following scale, subject to the increases authorized in *Increased Rates, 1920, supra*. The rates shown in this distance scale shall apply as maximum rates on coke, in carloads, minimum weight when loaded in open cars 50,000 pounds; when loaded in box or stock cars 40,000 pounds; except that when cars are loaded to cubic or visible capacity actual weight will apply.

Distances.	Rates per 2,000- pound ton.	Distances.	Rates per 2,000- pound ton.
	<i>Cents.</i>		<i>Cents.</i>
Not over 10 miles.....	90	Over 225 miles and not over 250 miles...	250
Over 10 miles and not over 20 miles.....	100	Over 250 miles and not over 275 miles...	260
Over 20 miles and not over 30 miles.....	110	Over 275 miles and not over 300 miles...	270
Over 30 miles and not over 40 miles.....	120	Over 300 miles and not over 325 miles...	280
Over 40 miles and not over 50 miles.....	130	Over 325 miles and not over 350 miles...	290
Over 50 miles and not over 60 miles.....	140	Over 350 miles and not over 375 miles...	300
Over 60 miles and not over 70 miles.....	150	Over 375 miles and not over 400 miles...	310
Over 70 miles and not over 80 miles.....	160	Over 400 miles and not over 425 miles...	320
Over 80 miles and not over 90 miles.....	170	Over 425 miles and not over 450 miles...	330
Over 90 miles and not over 100 miles.....	180	Over 450 miles and not over 475 miles...	340
Over 100 miles and not over 110 miles.....	190	Over 475 miles and not over 500 miles...	350
Over 110 miles and not over 125 miles.....	200	Over 500 miles and not over 525 miles...	360
Over 125 miles and not over 150 miles.....	210	Over 525 miles and not over 550 miles...	370
Over 150 miles and not over 175 miles.....	220	Over 550 miles and not over 575 miles...	380
Over 175 miles and not over 200 miles.....	230	Over 575 miles and not over 600 miles...	390
Over 200 miles and not over 225 miles.....	240		

The interstate rates from Solvay, Everett, and Geneva, and the minimum weight from Harbor Junction Wharf should be adjusted to the rates and minima herein prescribed. Through error the rates from Harbor Junction Wharf include float delivery at New York. This should be promptly corrected.

In No. 10842 and No. 10843 we reserved for consideration in this connection certain claims for reparation covering shipments to points in New York and Connecticut. Some of these shipments are also covered by the complaint in No. 10485.

Three of the shipments moved to upper New York points in September and October, 1917; one over the Lackawanna to Syracuse, 285 miles, one to Munns, 248 miles, and one to East Branch, 140 miles, over the Erie to Middletown, N. Y., and the New York, Ontario & Western beyond. Charges were collected at rates of \$1.90, \$4.25, and \$3.45, respectively, the latter two composed of the Erie's rate of \$1.05 to Middletown and sixth-class rates beyond. Effective November 24, 1917, the rate to Syracuse was reduced to \$1.75, and effective April 8, 1918, joint rates of \$2.15 and \$1.65 were established to Munns and East Branch, respectively.

The \$1.90 rate to Syracuse yielded ton-mile earnings of 6.7 mills. If increased under general order No. 28 it would be considerably less than the rate for 285 miles under the maximum scale above prescribed. The rates to Munns and East Branch yielded ton-mile earnings of 17.1 and 24.6 mills, and the subsequently established rates 8.7 and 11.8 mills, respectively. The latter rates, if increased in accordance with general order No. 28, would be higher to Munns and slightly lower to East Branch than rates under the maximum scale herein prescribed.

During September and October, 1917, nine cars were moved to Brooklyn deliveries, including Brooklyn East District Terminal and 62 I. C. C.



Wallabout Terminal, and to Long Island for distances from 13 to 51.9 miles, four by the Erie to Brooklyn at a rate of \$1.15, three by the Lackawanna to Brooklyn at a rate of \$1.25, and one each to Farmingdale and Atkins, Long Island, by the Erie and Long Island, at combination rates of \$2 and \$1.80, composed of the Erie's local rate of 65 cents to Jersey City, its 60-cent car-float charge and the Long Island's rates of 75 and 55 cents, respectively. A rate of \$1 for deliveries in Brooklyn was established by the Lackawanna November 24, 1917, and by the Erie October 8, 1917. Effective October 8, 1917, the Erie published a joint rate of \$1.60 to Atkins, but did not publish a joint rate to Farmingdale. Effective July 20, 1918, a joint rate of \$2.20 to Farmingdale was established and in the same tariff the rate to Atkins was increased to \$2, effective June 25, 1918.

Five cars were shipped during February and March, 1919, via New York harbor to points on the New Haven. One moved to Port Chester, N. Y., over the Erie, Pennsylvania, and New Haven; one to Bridgeport, Conn., over the Lackawanna, Pennsylvania, and New Haven; one to Port Chester over the Erie, Long Island, New York Connecting, and New Haven; and one each to Higganum and Midway, Conn., over the Lackawanna, Long Island, New York Connecting, and New Haven. Combination rates of \$3.50, \$3.80, \$3.70, \$4.50, and \$4.60, respectively, were charged. The distances, excluding the car float across New York harbor, range from 37 to 146 miles.

Two of these five cars moved, as routed, over the Pennsylvania float bridges at Greenville, N. J., and the local and distance rates of the Erie and Pennsylvania and of the Lackawanna and Pennsylvania to that point aggregated \$1.80. On the theory that Greenville is a Jersey City delivery, complainant contends that the movement to Greenville is covered by the rate of \$1.20, Seaboard to Jersey City, published by both the Erie and the Lackawanna. Defendants assert that Greenville is not a Jersey City delivery; that no deliveries are effected at Greenville; and that the float bridges at that point are merely the means by which through shipments are moved on to floats for transfer to other rails for further carriage or for delivery elsewhere in New York harbor. One of these cars was billed to Port Chester and the other to Bridgeport. The tariffs show that the \$1.20 rate was not limited to local deliveries in Jersey City, but was applicable to traffic destined beyond, and that Greenville Piers is a Jersey City station where interchange with the New Haven is made. We find that the \$1.20 rate was applicable from Seaboard to Greenville for that portion of the through movement. The resulting overcharges should be promptly refunded.

Although the two cars referred to in the preceding paragraph were floated from Greenville direct to the Harlem River terminals of the New Haven, and did not move, as routed, through Fresh Pond Junction, Long Island, the point of interchange between the Long Island and the New Haven, a charge of 3 cents per 100 pounds was assessed thereon as well as on the other three cars here considered. Complainant contends that although the New Haven intended by an exception in its distance tariff to prevent the application of the rates therein published to traffic reaching its rails at Fresh Pond Junction, Long Island, and to provide a rate of 3 cents per 100 pounds, in addition to its distance rate for 7 miles, for the haul from that point to its Harlem River terminals, through error the exception in that tariff refers to Fresh Pond Junction, N. J.; that therefore the application of the exception to these five shipments was illegal; and that the distance rates so published were the rates applicable for the movements beyond Fresh Pond Junction, Long Island. The typographical error was corrected by the New Haven in a subsequent issue of the distance tariff, effective April 21, 1919. We have held repeatedly that proof of error in the publication of rates does not justify a departure from the published rates, and that the intention of the tariff framers is not controlling. It follows that the erroneously printed exception did not prevent the published distance rates from applying on traffic from Fresh Pond Junction, Long Island. Refund of the overcharge on one of the two cars which did not move through that point has been made by the Erie, and the Lackawanna has balanced the overcharge on the other against an undercharge of an equal amount on the same shipment. The overcharges on the other three shipments should be promptly refunded.

When these shipments moved the \$2.90 rate heretofore referred to was in effect over the Poughkeepsie route. With full knowledge of this, complainant, after the first hearing in No. 10857, specifically routed the shipments over the harbor routes and subjected them to the higher combination rates, although it was not shown or claimed at that hearing that the harbor routes were more expeditious. It now contends that those rates were unreasonable, and asks us to find what would have been reasonable distance rates for these movements, based on the actual rail distances traversed plus 60 cents for the harbor float service, and to award reparation to the basis of such rates.

We find that the rates applicable on the shipments to Munns and East Branch, N. Y., were unreasonable to the extent that they exceed \$2.15 and \$1.65 per net ton, respectively, and that the rates applicable on the shipments to Syracuse, Brooklyn, Brooklyn East

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District Terminal, Wallabout Terminal, Atkins, Farmingdale, and Port Chester, N. Y., and Bridgeport, Higganum, and Midway, Conn., were not unreasonable.

We further find that complainant made the shipments described in this report and paid and bore the charges thereon; that it was damaged thereby and is entitled to reparation, with interest, in an amount equal to the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable. Complainant should comply with rule V of the Rules of Practice.

In connection with these complaints there were set for hearing such portions of fourth section application No. 1625 as seek authority to continue to charge for the transportation of coke from the Connellsville, Latrobe, and Gallitzin districts to Port Chester lower rates than are charged on like traffic to intermediate points. The rates to Port Chester, which is an important coke-consuming point, are \$4.20 from the Connellsville district, \$4 from the Latrobe, and \$3.80 from the Gallitzin. New Rochelle and Rye, N. Y., intermediate on the line from Harlem River, and a group of stations including Brewster, N. Y., and Danbury, South Norwalk, and Stamford, Conn., intermediate on the line from Poughkeepsie, take rates 20 cents per ton higher than those applied to Port Chester. The fourth section departure dates from 1908, when the Baltimore & Ohio traffic was diverted from the harbor route to the Poughkeepsie route, the understanding at that time being that the existing rates over the harbor route would be applied over the new route. Defendants ask that the present adjustment be continued, except that Port Chester rates be carried westward to, but not including, Harlem, thus reducing the rates to Rye and New Rochelle by 20 cents. It is testified that the distances from Connellsville to these points by way of Poughkeepsie is about 40 miles greater than by way of New York harbor. In view of the transportation disadvantages of the harbor route it is difficult to believe that the rates to Port Chester and neighboring points are justifiably lower by way of the harbor than by way of Poughkeepsie. The application for fourth section relief, to the extent herein considered, will be denied.

Appropriate orders will be entered.

## APPENDIXES.

## APPENDIX A.

To—	From Seaboard, N. J.			From Connells- ville, Pa.			From Gallitsin, Pa.			From Fairmount, W. Va.		
	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.
<i>New York, New Haven &amp; Hartford.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>
Danbury, Conn. ....	144	\$2.90	20.2	502	\$4.40	8.7	408	\$4.00	9.9	553	\$4.15	7.5
Bridgeport, Conn. ....	174	2.90	16.7	483	4.40	8.9	396	4.00	10.1	583	4.15	7.1
New Haven, Conn. ....	183	2.90	15.8	510	4.40	8.6	413	4.00	9.7	592	4.15	7
Pittsfield, Mass. ....	188	2.90	15.4	592	4.40	7.4	495	4.00	8.1	597	4.15	7
Hartford, Conn. ....	205	2.90	14.1	547	4.40	8	450	4.00	8.9	614	4.15	6.8
Holyoke, Mass. ....	219	2.90	13.3	581	4.40	7.6	484	4.00	8.3	628	4.15	6.6
Springfield, Mass. ....	224	2.90	13	579	4.40	7.6	482	4.00	8.3	633	4.15	6.6
New London, Conn. ....	234	2.90	12.4	561	4.40	7.8	464	4.00	8.6	643	4.15	6.4
Worcester, Mass. ....	282	2.90	10.3	613	4.40	7.2	516	4.00	7.7	691	4.15	6
Providence, R. I. ....	292	2.90	9.9	623	4.40	7.1	528	4.00	7.6	701	4.15	5.9
Fitchburg, Mass. ....	308	3.10	10.1	639	4.40	6.9	542	4.00	7.4	717	4.15	5.8
Boston, Mass. ....	318	2.90	9.1	649	4.40	6.8	552	4.00	7.2	727	4.15	5.7
New Bedford, Mass. ....	333	3.10	9.3	664	4.40	6.6	567	4.00	7.1	742	4.15	5.6
Lewell, Mass. ....	336	3.10	9.2	667	4.40	6.5	570	4.00	7	745	4.15	5.6

To—	From Seaboard, N. J.			From Gallitsin, Pa.			From Geneva, N. Y.			From Boston, Mass.		
	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.
<i>New York Central.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>
Poughkeepsie, N. Y. ....	76	\$2.20	28.9	544	\$3.60	6.6	269	\$2.20	8.2	270	\$2.40	8.9
Kingston, N. Y. ....	92	2.10	22.8	423	3.60	8.5	241	2.20	9.1	( <sup>1</sup> )		
Albany, N. Y. ....	146	2.80	19.2	475	3.20	6.7	199	1.80	9	202	2.40	11.8
Syracuse, N. Y. ....	285	2.80	9.8	298	3.00	10.2	51	.90	17.7	( <sup>1</sup> )		
Auburn, N. Y. ....	311	2.80	9	267	3.00	11.2	26	.90	34.6	( <sup>1</sup> )		
Oswego, N. Y. ....	321	2.80	8.8	310	3.00	9.7	87	1.20	13.8	( <sup>1</sup> )		
Watertown, N. Y. ....	324	3.20	9.9	370	8.70	10	124	1.70	13.7	380	3.30	8.7
Ogdensburg, N. Y. ....	366	3.40	9.3	434	3.90	9	188	1.90	10.1	( <sup>1</sup> )		
Rochester, N. Y. ....	362	3.10	8.6	281	2.90	10.2	51	.90	17.7	( <sup>1</sup> )		
Buffalo, N. Y. ....	403	3.00	7.4	275	2.80	9.5	109	1.40	12.9	408	3.30	6.6
<i>Delaware &amp; Hudson.</i>												
Schenectady, N. Y. ....	100	*3.10	19.4	374	3.20	8.6	246	2.10	8.5	242	2.40	9.9
Mechanicville, N. Y. ....	164	*3.10	18.9	391	3.20	8.2	263	2.10	8	230	2.80	12.7
Whitehall, N. Y. ....	223	*3.20	14.4	435	3.20	7.4	307	2.70	8.8	284	3.30	11.6
Port Henry, N. Y. ....	262	*3.20	12.2	474	3.20	6.8	346	2.70	7.8	323	3.40	10.5
Rouses Point, N. Y. ....	336	*4.00	11.9	546	4.00	7.3	420	2.70	6.4	( <sup>1</sup> )		
Standish, N. Y. ....	353	*3.50	9.9	564	3.40	6	436	2.80	6.4	( <sup>1</sup> )		

<sup>1</sup> No commodity rate published.<sup>2</sup> Since reduced to \$2.50.<sup>3</sup> Since reduced to \$3.10.<sup>4</sup> Since reduced to \$3.50.

To—	From Seaboard, N. J.			From Gallitzin, Pa.			From Glasport, Pa.			From Walston, Pa.		
	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.	Dis- tance.	Rate per ton.	Ton- mile earn- ings.
<i>Boston &amp; Maine.</i>												
Brattleboro, Vt.....	<i>Miles</i> 284	\$3.80	13.4	<i>Miles</i> 522	\$4.00	7.6	<i>Miles</i> 684	\$4.25	6.5	<i>Miles</i> 572	\$4.00	7
Gardner, Mass.....	285	3.80	13.3	550	4.00	7.3	671	4.25	6.3	598	4.00	6.3
Ayer, Mass.....	305	3.80	13.4	570	4.00	7	700	4.25	6.1	617	4.00	6.5
Concord, Mass.....	315	3.80	12.1	580	4.00	6.9	715	4.25	5.9	633	4.00	6.3
Salem, Mass.....	345	3.80	11	610	4.00	6.6	741	4.25	5.7	658	4.00	6
Nashua, N. H.....	322	3.80	11.3	587	4.00	6.7	717	4.25	5.9	635	4.00	6.3
Manchester, N. H.....	330	3.80	11.3	604	4.00	6.6	734	4.25	5.3	652	4.00	6.1
Exeter, N. H.....	340	3.80	10.9	614	4.00	6.5	744	4.25	5.7	674	4.00	5.9
Portsmouth, N. H.....	365	3.80	10.4	631	4.00	6.3	761	4.25	5.6	690	4.00	5.7
Portland, Me.....	424	3.80	8.9	689	4.00	5.3	819	4.25	5.2	736	4.00	5.4

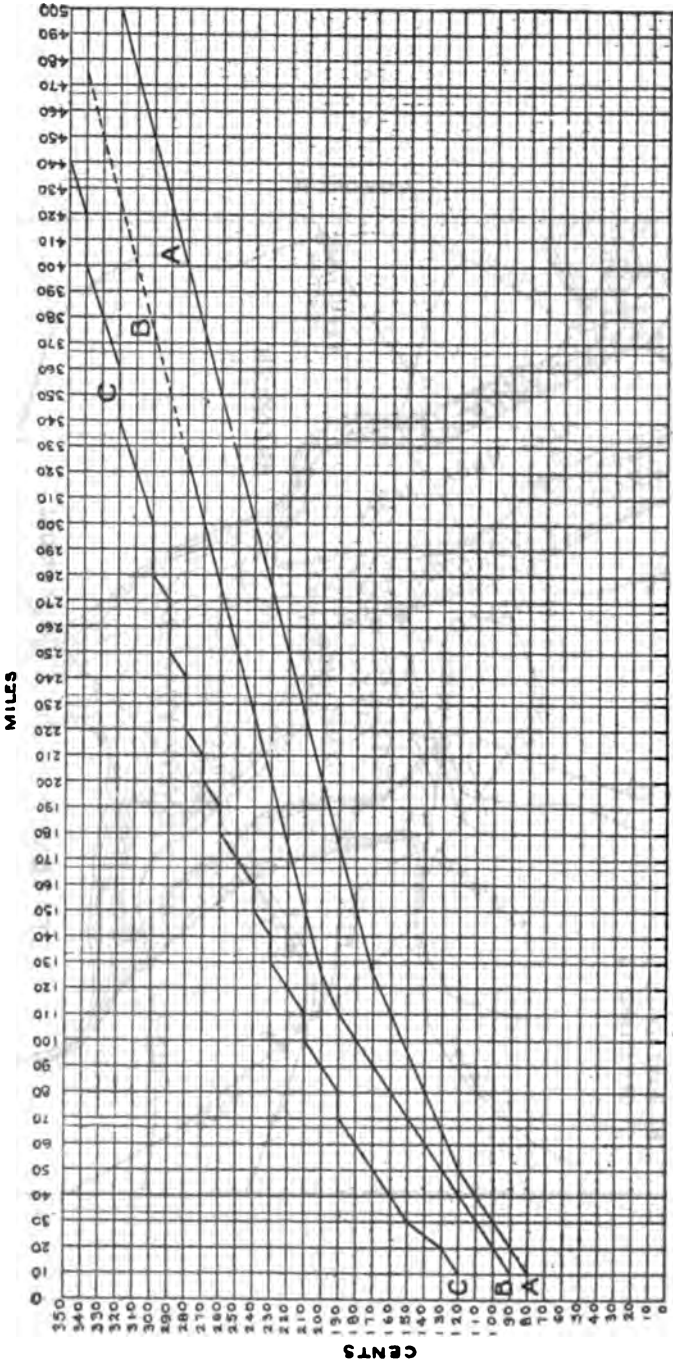
<sup>1</sup> Since reduced to \$3.20.

<sup>2</sup> Since reduced to \$3.10.

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APPENDIX C.



A- Scale proposed by complainant  
B- Providence scale  
C- New England scale, class A roads (before 25 % advance)

No. 11639.  
GILLESPIE COAL COMPANY  
v.  
ILLINOIS TRACTION SYSTEM ET AL.

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*Submitted January 10, 1921. Decided June 18, 1921.*

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Rates on coal, in carloads, from complainant's mine at Gillespie, Ill., to certain interstate destinations found not unreasonable but unduly prejudicial. Undue prejudice ordered removed and reparation denied.

*R. W. Ropiequet* and *W. C. Ropiequet* for complainant.

*James A. Knowlton* for Illinois Traction System; *D. P. Connell* for New York Central lines; *James Stillwell* for Pennsylvania system; and *A. P. Humburg* for Illinois Central Railroad and other defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

*AITCHISON, Commissioner:*

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is engaged in mining coal at Gillespie, Ill. By its complaint, filed July 21, 1920, it alleges that the rates on carloads of coal from its mine to interstate destinations on the lines of defendants are unjust and unreasonable and unduly prejudicial. Complainant asks an order awarding reparation and prescribing just and reasonable joint rates for the future.

Gillespie is about 52 miles south of Springfield, Ill., and complainant's mine is served by the Illinois Traction system of electric railways. The lines of the traction system are almost entirely within Illinois. St. Louis, Mo., is the only point outside of that state which is reached directly. The traction system has numerous connections, direct and indirect, with the lines of defendant steam carriers, and these connections together with the junction points with the various lines, are detailed in *St. Louis Electric Terminal Ry. Co. v. Ry. Co.*, 55 I. C. C., 52, 54.

From mines on defendant steam lines and their connections within the so-called Springfield group, which includes Gillespie, as a rule the same rates apply uniformly to points on the lines of defendants serving the states of Missouri, Kansas, Nebraska, Iowa, South Da-

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kota, North Dakota, Minnesota, Michigan, Indiana, and Wisconsin, except that as to coal destined to points west of and reached through St. Louis, Gillespie is situated within the so-called Belleville group, from which defendant steam lines generally maintain rates that are somewhat higher than the Springfield group rates. These groups are described in *The Illinois Coal Cases*, 32 I. C. C., 659. To the Missouri River and intermediate territory rates from the Springfield group vary over different routes, although the group application is generally preserved in connection with each route. Joint rates are now maintained from mines on the Illinois Traction system, including complainant's mine, to destinations on the Chicago, Rock Island & Pacific Railway and the Minneapolis & St. Louis Railroad and certain lines connecting with those roads. Coal from complainant's mine to other interstate destinations, excepting St. Louis, moves on combinations of the local rates of the traction system to the junctions with defendant steam lines and group rates beyond. Complainant contends that these rates are unjust and unreasonable and unduly prejudicial to the extent that they exceed the Springfield group rates and, on traffic moving through St. Louis, the Belleville group rates.

The rate situation may be illustrated by the following table, which shows rates per net ton on prepared sizes of coal to representative points prior to the general increases of 1920:

To—	From Benld, Ill.	From Staunton, Ill.	From com- plain- ant's mine (Gilles- pie).
Gary, Ind. ....	.....	\$1.83	\$2.12
Benton Harbor, Mich. ....	.....	1.77	2.57
Milwaukee, Wis. ....	\$1.83	1.83	2.44
Jefferson City, Mo. ....	.....	2.00	2.80

The rates from Benld and Staunton are the Springfield group rates. The rates from Gillespie are combinations on either Benld or Staunton, at which points the Illinois Traction system connects with the Chicago & North Western and Wabash, respectively.

The Springfield group rates apply from mines on the Chicago & Illinois Midland Railway, a short line in the vicinity of Springfield; and the Belleville group rates apply from mines on the St. Louis & Belleville Electric Railway and the East St. Louis & Suburban Railway. The lines serving mines in the Springfield group generally maintain joint rates with one another and with their connections on the Springfield group basis. By absorbing the terminal

charges of a number of short-line or terminal carriers in Illinois, certain defendants also apply from mines served by those carriers rates no higher than applicable from the groups in which the mines are located. The Cleveland, Cincinnati, Chicago & St. Louis Railway serves certain mines at Gillespie, not including complainant's, from which it maintains the Springfield group rates to interstate destinations on its own lines and on those of connecting defendants. It also participates in joint group rates from other mines in that group to destinations on its own lines in Michigan.

Complainant competes in the sale of coal with various mines, including those in the Springfield and Belleville groups. Its coal is sold f. o. b. mine, and to meet the competition of mines from which the group rates apply it must absorb charges over and above those accruing at the group rates.

Defendants' opposition to the establishment of joint rates involves chiefly a matter of car supply. The Illinois Traction system asserts that it has not sufficient coal cars to meet adequately the needs of shippers on its lines and fears that if its cars are allowed to leave its lines in the event joint rates are established from complainant's mine its coal-car equipment will be reduced to a point where it will be unable to serve those shippers. There is a large consumption of coal at various points on the lines of the traction system, and that carrier accordingly takes the position that because of its present lack of coal-car equipment complainant's shipments should be confined to those points and to points to which joint rates are now published. The attitude of the traction system makes its connections apprehensive that they will be called upon to supply complainant's mine with cars and thereby further deplete an already inadequate supply of coal cars on their own rails. They show that they have been and are unable to supply the required number of cars for mines which they serve, and assert that it will be unfair to those mines if they have to supply cars for complainant's mine. While these matters must be considered, they do not constitute ground for depriving complainant of nonprejudicial rates. Furthermore, certain defendants now supply cars to mines on other short lines, including the Springfield Terminal Railway, St. Louis & Belleville Electric Railway, and East St. Louis & Suburban Railway. By trackage arrangements certain of defendants also reach mines not on their rails to which they supply cars.

It is urged that as Gillespie is served by lines of the New York Central system, any order requiring that system to establish through routes and joint rates would result in short-hauling it in contravention of section 15 of the interstate commerce act. We have, however, frequently held that carriers may not rely upon a technical

construction of one portion of the act to justify a violation of another provision, and that, in determining a question such as that involved here, consideration must be given not alone to section 15, but also to the provision of the act which makes it the duty of carriers to establish through routes and just and reasonable rates and charges applicable thereto, and that which forbids undue prejudice with respect to the interchange of traffic between connecting carriers. *Chicago, Lake Shore & S. B. Ry. Co. v. Director General*, 58 I. C. C., 647, 652, and cases cited.

We find that the rates on coal, in carloads, from complainant's mine at Gillespie, Ill., except via St. Louis, to points on defendants' lines in the states hereinbefore named are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like traffic from mines located on the tracks of defendant steam lines, within the Springfield group, to the same points of destination, and that rates via St. Louis are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained from mines located on the tracks of defendant steam lines within the Belleville group to the same points of destination.

The Baltimore & Ohio Railroad Company does not serve territory covered by this case, and the complaint will be dismissed as to that carrier. The evidence adduced does not establish that the rates were or are unreasonable, or that complainant is entitled to reparation.

An appropriate order will be entered.

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No. 10547.

UNITED STATES CAST IRON PIPE & FOUNDRY  
COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA  
RAILROAD COMPANY, ET AL.

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*Submitted December 16, 1919. Decided June 16, 1921.*

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1. The Scottdale Connecting Railroad Company found to be a plant facility of the United States Cast Iron Pipe & Foundry Company, and not a common carrier.
2. The failure of the trunk line defendants to make an allowance to complainant or to Scottdale Connecting Railroad Company for performing the interchange switching and spotting service at complainant's plant at Scottdale, Pa., not shown to have resulted in rates or charges which were or are unreasonable, unjustly discriminatory, or unduly prejudicial, as alleged.
3. Complaint dismissed.

*Britton & Gray and Evans Browne for complainant.*

*George Stuart Patterson and James Stillwell for Pennsylvania Railroad Company and Baltimore & Ohio Railroad Company.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by complainant.

Complainant is a corporation engaged in the manufacture of various iron articles including cast-iron pipe and fittings at Scottdale, Pa., in the Connellsville rate district. Its plant is served by the Pennsylvania Railroad, the Baltimore & Ohio Railroad, and by the Scottdale Connecting Railroad, hereinafter termed the Scottdale, an incorporated industrial switching railroad all the stock of which is owned by complainant. Though joined as a defendant, the interests of the Scottdale in this proceeding are the same as those of complainant, and therefore we will herein use the term defendants as referring only to the trunk lines above named. By complaint filed March 31, 1919, as amended, complainant alleges that since April 1,

1914, the defendants have failed to make an allowance either to it or to the Scottdale for switching between points of loading and unloading within complainant's plant and points of interchange with the connecting trunk lines, while contemporaneously performing a similar service for other industries in the Connellsville, Pittsburgh, and Johnstown rate districts, without charge in addition to the line-haul rates, or making an allowance to industries which performed such service themselves. Complainant claims that it has thereby been subjected to the payment of rates and charges which were unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation and that we prescribe for the future a reasonable allowance or division to be paid by defendants to it or to the Scottdale for the interchange switching performed by the latter.

In its brief complainant asks that we find either that the Scottdale is a common carrier, and that both reparation and an allowance should be based on its character as such; or that if not a common carrier, it is a plant facility of complainant; and that complainant, in any event, is entitled to reparation for the actual cost to it for the interchange switching and spotting service performed. Complainant states that there was a period in 1916 when the tariff charges of the Scottdale covered its operating costs, but that during the two-year period prior to the filing of the complaint such costs exceeded the revenues. It seeks reparation from the defendants for itself in the amount of the charges paid the Scottdale, and for the latter in the amount of the difference between its cost of service and the charges received therefor during such period as those costs exceeded such charges.

The Scottdale was incorporated in 1897 under the laws of the state of Pennsylvania, with a capital stock of \$10,000, all shares of which have been issued and are owned by complainant. It has issued no bonds, but the last annual report on file with us indicates that it is indebted to complainant in the sum of \$15,000, without interest. All its officers are officers of the complainant corporation and receive no additional compensation for services to the railroad.

The track of the Scottdale, 2.31 miles in all, lies wholly within the plant property of complainant and extends almost entirely around complainant's plant. It also extends through the plant of the McKinney Steel Company, an independent industry which leases and occupies part of complainant's plant property. The Scottdale, however, performs no service for the latter industry, as that company has trackage rights and operates with its own power over about a mile of the Scottdale's track. All of this track is standard gauge, and, together with the right of way upon which it rests, is owned by the Scottdale, which also uses complainant's system of standard-

gauge plant tracks in switching and spotting cars. The original right of way of the Scottdale railroad was purchased from complainant's predecessor and there have been substantial changes from time to time. All its track is main line, although from 3,000 to 5,000 feet of it can be used at times as sidetrack. It owns no cars, and but two locomotives, one of which is old and not in service. It transports freight in carloads and less than carloads, but carries no passengers, mail, or express. It does not issue bills of lading, switching tickets, or transfer slips. Shipments are billed by the trunk lines, and their charges are collected directly from shippers and receivers. The Scottdale serves complainant almost exclusively. Besides the interchange switching and spotting, it performs considerable intraplant switching. About 85 per cent of the pig iron used by complainant is obtained from the McKinney company, all of which traffic is handled by the Scottdale after being placed on its rails by the power of the McKinney company. Though it holds itself out as a common carrier, the Scottdale has no team tracks of its own and makes delivery on the few occasions when its facilities are availed of on a team track of complainant well within the plant. Complainant allows such delivery as a matter of convenience and receives no compensation therefor.

The Scottdale files annual reports with us and keeps its accounts under our requirements. At the time of the hearing it also had tariffs on file with us, but they have since been canceled. Demurrage is assessed by the trunk lines directly against shippers and receivers of freight. The complainant is a party to an average agreement with the trunk lines.

The tracks of the Pennsylvania and Baltimore & Ohio are on opposite sides of, and adjacent to, complainant's plant property. The Scottdale connects directly with the interchange tracks of the Baltimore & Ohio for inbound and outbound traffic. Owing to congestion on its own tracks the Pennsylvania delivers inbound traffic on the line of the Scottdale. The latter's rails do not connect directly with the interchange track of the Pennsylvania for outbound traffic, and delivery thereto is effected by a short movement over the Pennsylvania's rails.

The average length of haul between complainant's loading and unloading points and the interchange points with the connecting trunk lines is 4,976 feet. The total haul of the Scottdale on interchange traffic to the team track upon which complainant permits freight for other parties to be unloaded is 2,600 feet from the point of interchange with the Baltimore & Ohio, and 3,500 feet from that with the Pennsylvania. The average haul on pig iron furnished to complainant by the McKinney company is 7,667 feet.

The following is an analysis of traffic and revenues of the Scottdale for the calendar year 1918:

Service.	Tons.		Cars.		Revenue.	
	State.	Inter-state.	State.	Inter-state.	State.	Inter-state.
Interchange service:						
Between complainant's plant and junctions with connecting carriers.....	73,379	71,946	2,335	2,566	\$4,076.55	\$3,878.25
Between independent industries' and junctions with connecting carriers.....	2,834	51	57	2	169.99	2.06
Plant and intraplant service for complainant.....	33,900		1,130		1,018.25	
Local switching between complainant's plant and McKinney Company.....	35,520		1,184		1,071.75	
Total.....	145,633	71,997	4,706	2,568	6,336.54	3,881.30

<sup>1</sup> Consists of J. W. Ruth, a coal-and-lumber dealer at Scottdale; Scottdale Y. M. C. A.; and Pennsylvania State Highway Department.

In addition the Scottdale received \$1,000 from lease of track and \$2,670 from rent of locomotive to complainant.

During the year 1918 the Scottdale incurred a net loss of \$2,880.41, which brought its accrued deficit to \$8,183.87. The total investment in road and equipment shown in the annual report for the year mentioned was \$19,338.02. There is testimony, however, that items included in this amount represented only nominal values, and a statement filed of record shows a value of \$123,207.60, which is regarded by complainant as a fair and proper value for the road and equipment owned by the Scottdale as it actually exists. This road has not been valued by either state or federal authorities. The charges of the Scottdale at the time of the hearing were as follows: 6 cents per net or gross ton for all interchange switching and spotting, \$1 per car for plant and intraplant switching, \$1 per car for local switching; less-than-carload freight charged same as carload, minimum charge \$1 per car.

For a number of years prior to 1914 the Scottdale received from the connecting trunk lines furnace allowances, which were changed from time to time, for its service in switching ore, coke, and limestone. These allowances were discontinued on March 31, 1914, as to interstate traffic and on May 14, 1914, as to intrastate traffic, since which dates no allowances have been paid.

Defendants deny that the Scottdale is a common carrier. It is clear that the occasional services performed for others than complainant do not constitute it such. In the *Tap Line Cases*, 234 U. S., 1, the Supreme Court said:

It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character.

It certainly can not be said that there is an enforceable right in the public to use the facilities and demand service of a road such as that here in question where it lies within the power of private corporations to deny the public access to the road's facilities.

We are of opinion and find that the Scottdale Connecting Railroad Company is not a common carrier, but is a plant facility of complainant.

It appears from the record that it is the general practice in the Pittsburgh, Connellsville, and Johnstown rate districts for the trunk lines to perform without extra charge the interchange switching and spotting service for industries situated thereon which do not have their own power, and that with some exceptions it has been the custom for several years for the carriers to make allowances to the iron and steel industries or their industrial railways for performing such service for themselves.

In support of the allegation of undue prejudice, complainant showed that two of its competitors having plants at Massillon, Coshocton, and Newcomerstown, Ohio, on the lines of the Pennsylvania system, receive a complete interchange switching and spotting service for the line-haul rate, and that the trunk line defendants compensate the McKeesport Connecting Railroad for performing a similar service at McKeesport, Pa., for its controlling industry, the National Tube Company, which is also a competitor of complainant. But we have found the McKeesport Connecting Railroad to be a common carrier. *National Tube Co. v. P., C., & St. L. R. R. Co.*, 61 I. C. C., 590.

Complainant also referred to the fact that there are a number of noncompeting industries in the same general territory which perform their own switching and spotting services and to which the trunk line defendants pay allowances therefor. The plant of one of these industries, the American Sheet & Tin Plate Company, adjoins that of complainant. But in no case did complainant show a substantial similarity of conditions sufficient to establish unjust discrimination.

Complainant is here asking primarily for an allowance. It has never demanded, nor does it now demand, performance of the interchange switching and spotting service by the trunk lines. Defendants offer to perform such service if it is their duty so to do, and if the track lay-out in the plant will permit. It appears from the record, however, that complainant prefers to do the work itself, and that it would not be possible for the trunk lines to operate within the plant with available equipment because of excessive track curvature. It is the right of the defendants to perform any transportation service which it is their duty to perform, and in the absence



of undue prejudice, the existence of which in the instant case has not been satisfactorily shown, we are without power to require them to make an allowance. If any inequality occurs by reason of the fact that complainant's competitors at the Ohio points mentioned received for the line-haul rate a service similar to that for which complainant requests an allowance, it is due rather to the position which complainant has assumed than to any undue prejudice which the trunk line defendants could be required to remove.

Upon a consideration of all the facts of record, we further find that the failure of the trunk line defendants to pay to complainant or to Scottdale Connecting Railroad Company an allowance for performing the interchange switching and spotting service at complainant's plant at Scottdale, Pa., has not been shown to result in rates or charges that were or are unreasonable, unjustly discriminatory, or unduly prejudicial.

The complaint will be dismissed.

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No. 10891.

O. E. BURNS AND F. R. KNAPP

v.

BIG SANDY & KENTUCKY RIVER RAILWAY COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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Submitted October 20, 1920. Decided June 23, 1921.

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Rates on lumber from Sherman, Ky., to interstate destinations found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*C. S. Bather* for complainants.

*J. S. Patterson, W. S. Bronson, Alex. M. Bull, and John F. Finerty* for Director General and defendants other than Big Sandy & Kentucky River Railway Company.

*George B. Martin, John S. Burchmore, and Luther M. Walter* for Big Sandy & Kentucky River Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

ATTCHISON, *Commissioner*:

The parties have excepted to the report proposed by the examiner who heard the case. Our conclusions, in some respects, differ from those he proposed.

Complainants are copartners dealing in lumber and forest products, with a sawmill near Sherman, Ky. They are served by the Big Sandy & Kentucky River Railway, hereinafter called the Kentucky Railway. That railway is about 9.5 miles long, and extends from Riceville, Ky., to Dawkins, Ky., and there connects with the Big Sandy division of the Chesapeake & Ohio Railway. Sherman is located about 8 miles from this junction. Shipments from Sherman are billed from Riceville. Dawkins is about 61 miles south of the connection of the Big Sandy branch of the Chesapeake & Ohio with the main line at Big Sandy Junction, Ky. No joint rates are in effect from points on the Kentucky Railway. Through rates to interstate destinations are composed of the local rates of the Kentucky Railway up to Dawkins, plus the rates from Dawkins

beyond. The line of the Chesapeake & Ohio was operated by the Director General during the period of federal control. The Kentucky Railway was released from federal control June 29, 1918.

Complainants pray for reparation and ask for the establishment of reasonable and nonprejudicial rates for the future. They base their demands upon allegations that the rates charged for the transportation of lumber and other forest products from Riceville and Sherman to various destinations, mainly in central and trunk line territories, have been and are unreasonable, and also unjustly discriminatory and unduly prejudicial, to the extent that they exceed the rates from Dawkins by more than 2 cents per 100 pounds.

While complainants pray for the establishment of joint or proportional rates from Riceville and Sherman not to exceed by more than 2 cents per 100 pounds the rates contemporaneously in effect from Dawkins, there is little prospect of any future movement of lumber from Riceville or Sherman, as practically all the timber along the Kentucky Railway's line from Riceville to Dawkins has been cut. No public necessity for such rates appears. This report will therefore be confined to the question of reparation on past shipments.

Although complainants allege that the through rates charged were unreasonable and unduly prejudicial, their attack is principally directed against the Sherman to Dawkins factor. The rates from Dawkins are not here assailed as applied to traffic originating at that point on the Chesapeake & Ohio. Complainants assert, however, that as integral parts of through rates from Sherman, the rates from Dawkins to interstate destinations are unreasonably high, and that their use subjected complainant to unjust discrimination and undue prejudice. The allegation of unjust discrimination is not supported by the record. See *Pacific Lumber Co. v. N. W. P. R. R. Co.*, 51 I. C. C., 738, 760. Complainants have not shown damage because of undue prejudice, if any, that may have existed in the past.

From December 1, 1913, to September 10, 1914, the rates on lumber between points on the Kentucky Railway were 2 cents for distances 3 miles or less; 5 cents for more than 3 and not exceeding 5 miles; and 10 cents for more than 5 but not exceeding 10 miles. Rates stated in this report are applicable per 100 pounds. During this period rates on forest products were the same for the 3-mile zone but were 3 and 5 cents, respectively, for the 5-mile and 10-mile zones. Effective September 10, 1914, rates on lumber and forest products were equalized and made 2, 3, and 6 cents, respectively, for the 3-mile, 5-mile, and 10-mile zones. These rates remained in effect until June 25, 1918, when under general order No. 28 of the Director General of Railroads they were increased to 2.5 cents for the 3-mile zone,

4 cents for the 5-mile zone, and 7.5 cents for the 10-mile zone. Sherman is 8 miles from Dawkins and rates for the 10-mile zone were applied. When the shipments moved the rates on logs, ties, and spoke timber were made 2 to 3.5 cents lower for the 10-mile zone than the rates charged on other forest products in order to meet wagon competition.

Since the submission the rate situation on the Kentucky Railway has changed substantially, due to the completion of an extension of the line of that carrier which was under construction at the time of the hearing. The present terminus of that line, as indicated by tariffs on file with us, is Royalton, Ky., a point 9 miles beyond Riceville. Current tariffs publish carload rates on lumber and forest products of 10.5 cents for distances not exceeding 10 miles, and 12.5 cents for distances over 10 miles but not exceeding 20 miles. While certain timber holdings along the projected line of the Kentucky Railway beyond Riceville were mentioned at the hearing, future movements from those points are speculative, and the rates therefrom are not now before us.

The Kentucky Railway has never paid a dividend. The result of its operations since 1913 to December 31, 1918, is a credit balance of \$43,231.23. This, it claims, is equivalent to an average annual return of less than 5 per cent on the property investment. The Kentucky Railway line extends through mountainous country, with numerous bridges and culverts.

Complainants refer to the abnormality in progression of the rates of the Kentucky Railway in that the 6-cent rate from Sherman, prior to June 25, 1918, exceeded the aggregate of intermediate rates based on Blair, Ky. Blair is intermediate to Sherman, and is 3 miles from Dawkins and 5 miles from Sherman. The rate for the 5-mile zone was 3 cents, and for the 3-mile zone 2 cents, an aggregate of 5 cents, or 1 cent less than the rate applicable from Sherman to Dawkins. This situation continued under the rates subsequent to June 25, 1918, until December 8, 1920. While complainants contend that this is a departure from the aggregate-of-intermediates clause of the fourth section of the act, we are of the view that the legally applicable rates were the combinations on Blair and Dawkins, instead of the combination on Dawkins, and that shipments which moved during this period were overcharged 1 cent per 100 pounds. All overcharges should be promptly refunded.

The Sherman to Dawkins factor of the through rate legally applicable yielded ton-mile earnings of 12.5 cents prior to June 25, 1918, and 16.25 cents subsequent to that date. These earnings appear somewhat high but not exorbitant when we consider that the distance is short and the country traversed is mountainous. Moreover,

the issue here is as to the reasonableness of the through rates applied to complainants' shipments, of which the Sherman to Dawkins rate is but a short factor.

Rates from Dawkins to points in central territory are slightly more than 4 cents and in some cases 5 cents higher than the rates applicable from Catlettsburg, Ky., a point on the main line of the Chesapeake & Ohio about 62 miles north of Dawkins. To trunk line territory the rates are the same as those contemporaneously applied from Louisville, Ky., to the same destinations. The rates from Dawkins to 17 representative destinations in central and trunk line territories yield ton-mile revenue of from 18.78 mills to 7.16 mills for hauls ranging from 181 to 949 miles, and compare favorably with the rates to the same destinations for similar distances from points on the Norfolk & Western. The applicable through rates from Riceville to 24 representative destinations, mainly in central and trunk line territories yield ton-mile revenue of from 22 mills to 8 mills for hauls of from 212 to 980 miles. The average revenue to all destinations approximates 11 mills.

The Kentucky Railway owns practically no equipment suitable for shipments of lumber, and all cars moved from points on its line are furnished by the Chesapeake & Ohio. The Chesapeake & Ohio does not differentiate the services rendered by it on shipments originating on the Kentucky Railway from shipments which might originate on its own rails at Dawkins. It therefore urges that it is entitled to charge for transportation from Dawkins to interstate destinations the full rate from Dawkins for its own services without regard to the fact that this is only one factor in the through transportation from Sherman, and independently of whatever local charges have accrued to the Kentucky Railway. In opposition to this complainants show that from certain other junction points the Chesapeake & Ohio publishes proportional rates from 2 to 3.5 cents lower than the local rate from the junction point. Reference is particularly made to short stub lines of the Chesapeake & Ohio's Lexington and Big Sandy divisions, and to the Sewell Valley Railroad, an independent short line connecting with the main line of the Chesapeake & Ohio at Meadow Creek, W. Va. There was no showing as to similarity of transportation and operating conditions on these lines as compared with those on the Kentucky Railway. We do not have before us a case where an independent line, included within the geographical limits of a group, has been excluded from the benefits of the group rate.

We find that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial, and will dismiss the complaint.

No. 11269.

## ILLINOIS STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND ELGIN, JOLIET &  
EASTERN RAILWAY COMPANY.

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Submitted January 14, 1921. Decided June 23, 1921.

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Rate of \$5 per car, plus 15 cents per net ton for the transportation of coke, in carloads, from coke ovens to various points within the area of complainant's plant at Gary, Ind., found to have been unjust and unreasonable during the period from June 25 to September 22, 1918. Reparation awarded.

*Knapp & Campbell* and *Harry I. Allen* for complainant.

*Royal T. McKenna* for Director General.

*Thomas E. Bond* for Elgin, Joliet & Eastern Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued before us. We have reached a conclusion different from that recommended by him. Complainant is a corporation engaged in the manufacture of steel at Gary, Ind. In its complaint filed February 26, 1920, it alleges that the rate charged by defendants for the intraplant movement of 15,448 carloads of coke between June 25, 1918, and September 22, 1918, was unjust and unreasonable, and it seeks reparation.

The shipments moved in cuts of about 16 cars over the Elgin, Joliet & Eastern Railway, hereinafter referred to as defendant, which owns the tracks within complainant's plant, a distance of about 2.25 miles. Defendant collected freight charges in the sum of \$159,486.19 at a rate of \$5 per car plus 15 cents per net ton. In the majority of instances the movements consisted of blast-furnace coke from the coke ovens to trestles adjacent to the blast furnaces. In the typical haul, defendant used three engines, which made five engine movements from the placement of the empty car at a point adjacent to the ovens to the return of the empty car to the storage tracks. Complainant performed the actual spotting of the cars

at the ovens for loading. During the period of movement defendant handled an average of 165 cars of coke daily, and the traffic was in such volume that switch engines and crews were assigned exclusively to this service and to the handling of about 70 carloads of miscellaneous material daily. The average weight of the cars in issue was 35.5 net tons; the average earnings per car, \$10.33.

Complainant had no coke ovens when they began operations at Gary, and defendant established an all-commodities rate of \$1.50 per car for all intraplant switching. Upon the subsequent addition of coke ovens to complainant's manufacturing facilities defendant published a rate of \$3 per car for the intraplant movement of coke by the addition of an item to the current tariff. In 1917 both the all-commodities rate and the coke rate were increased to \$5, but no change in the method of publication followed. Effective June 25, 1918, under the provisions of general order No. 28, the all-commodities rate became \$6.50 per car. Under that order coke rates from 0 to 49 cents per ton sustained a specific increase of 15 cents per net ton. This resulted in an increase of more than 100 per cent in the coke rate. Complainants thereupon protested to the Railroad Administration, and, effective September 23, 1918, that part of the item which named the coke rate was canceled and by appropriate reference the all-commodities rate of \$6.50 became applicable to coke. Complainant contends that the charges assessed on shipments that moved in the interim were unjust and unreasonable to the extent that they exceeded \$6.50 per car.

Another plant of the complainant is located at Joliet, Ill. During the period of the complaint defendant hauled carload shipments of coke from coke ovens of the complainant located within that plant a distance of 1.5 miles to blast furnaces within the plant area. These movements did not differ materially from those at Gary. On June 25, 1918, the all-commodities intraplant switching charge of \$5 per car, which was also applicable to coke at Joliet, was increased to \$6.50 per car.

Complainant also cites all-commodity intraplant switching charges of other lines for comparable movements of coke, principally within the Chicago switching district, which, generally speaking, did not, during the period of complaint, exceed \$2.50 per car.

Defendant handled numerous commodities other than coke, such as flue dust, scale, stone, scrap, etc., between the units of complainant's plant at Gary during the period the coke shipments moved. These commodities moved for distances as long or longer, and the necessary engine movements therefore were as many or more than the distances and movements above stated for coke. The all-commodities rate of \$6.50 applied to these shipments.

In *Rogers-Brown Iron Co. v. Director General*, 59 I. C. C., 186, 189, we said:

In our opinion weight must be given to the fact that the movements were regular and of considerable volume and the commodity of low value; that little terminal service was required of defendant at either end; that the distance was short \* \* \*; that the service was performed in a switching district and by switching engines and crews constantly on duty therein; and that the charge was in excess of other charges for similar service in the same general territory.

This language is peculiarly applicable in the instant case where the record shows that the volume of movement was regular and heavy, the distance short, the service performed by switching engines and crews constantly on duty, and the charges in excess of other charges for similar services in the same general territory.

We find that the intraplant switching charges on coke in effect and collected during the period named were unjust and unreasonable to the extent that they exceeded \$6.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11245.

STATE CORPORATION COMMISSION OF NEW MEXICO  
ET AL.

v.

DIRECTOR GENERAL, CHICAGO, ROCK ISLAND &  
PACIFIC RAILWAY COMPANY, ET AL.

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*Submitted November 19, 1920. Decided June 23, 1921.*

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1. Rate of 41 cents per 100 pounds on wheat, in carloads, from Tucumcari, N. Mex., to Galveston, Tex., not shown to be unjustly discriminatory or unduly prejudicial but found unreasonable to the extent indicated in the report.
2. Fourth section relief denied.

*J. L. Bland and R. A. Prentice* for State Corporation Commission of New Mexico.

*J. L. Bland* for Tucumcari Chamber of Commerce.

*A. B. Enoch* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, POTTER, AND ESCH.

POTTER, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by defendants.

The complaint in this proceeding was filed by the State Corporation Commission of New Mexico and the Tucumcari Chamber of Commerce of Tucumcari, N. Mex. As amended it alleges that defendants' rate on wheat, in carloads, from Tucumcari to Galveston, Tex., is unreasonable, unjustly discriminatory, and unduly prejudicial as compared with rates on the same commodity from Melrose and Clovis, N. Mex., to Galveston. A violation of the fourth section also is alleged. Other allegations contained in the original complaint have been abandoned. The establishment of a reasonable and nonprejudicial rate is asked. Except when otherwise indicated, rates referred to herein are domestic rates and are stated in cents per 100 pounds. References to present rates are to those in effect prior to *Increased Rates, 1920*, 58 I. C. C., 220.

Tucumcari is served by the El Paso & Southwestern Railroad and the Chicago, Rock Island & Pacific Railway. By way of the last-  
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named carrier it is 42 miles west of Glen Rio, Tex., the first station east of the New Mexico-Texas state line. The short route from Tucumcari to Galveston is over the Rock Island system lines to Amarillo, Tex., the Fort Worth & Denver City Railway to Fort Worth, Tex., the Trinity & Brazos Valley Railway to Houston, Tex., and the International & Great Northern Railway, beyond, 755 miles, but defendants testify that unless otherwise routed by the shipper, the Rock Island moves the traffic through El Reno, Okla., delivering it to its connections at Fort Worth, which route is materially longer than the short route. Melrose and Clovis are local points on the Atchison, Topeka & Santa Fe Railway, 38 and 9 miles respectively west of Texico, N. Mex., which is immediately adjacent to the New Mexico-Texas state line. The short route from Melrose and Clovis to Galveston is over the Santa Fe system lines through Sweetwater and Temple, Tex. The rates to Galveston are 41 cents from Tucumcari, 32.5 cents from Melrose, and 29 cents from Clovis. Immediately prior to June 25, 1918, they were 32.5 cents from Tucumcari, 26.5 cents from Melrose, and 21.5 cents from Clovis. The present rates therefore represent increases in the rates in effect prior to that date of 8.5 cents from Tucumcari, 6 cents from Melrose, and 7.5 cents from Clovis. The rates from Melrose and Clovis are joint rates while the 41-cent rate from Tucumcari is made on combination, 13 cents to Glen Rio and 28 cents beyond. Prior to June 25, 1918, a joint export rate of 26.5 cents also applied from Tucumcari to Galveston and most of the wheat shipped from that point apparently moved under that rate. On June 25, 1918, the export rate was canceled and the present complaint appears to be an indirect result of the cancellation of that rate.

The wheat crop in this immediate section is raised in a belt which lies between the Rock Island and Santa Fe railroads, some distance south of Tucumcari and north of Melrose and Clovis. It is brought into these shipping points by wagon or truck. The testimony is particularly directed to the relative situation as between Tucumcari and Melrose. While the center of the belt is somewhat nearer Melrose than Tucumcari, there is but little difference in the respective drayage charges from much of this territory to these respective points, as a portion of the haul to Melrose is through sand. As the price of wheat in this section is based on the Galveston export market, following the building of the elevator at Tucumcari and prior to the cancellation of the export rate, most of the wheat from certain portions of the belt was shipped from that point; but as the existing advantage of the freight rates in favor of Melrose is reflected in correspondingly higher prices paid at that point, a relatively small amount of the traffic is now shipped from Tucumcari. Complainant attacks

the rate from Tucumcari as unreasonable, but its main object in this proceeding is to secure a proper relation to the rate from Melrose.

The Atchison, Topeka & Santa Fe is not named as a defendant and, as has been pointed out, does not serve Tucumcari. A finding that the adjustment is unduly prejudicial to Tucumcari, if otherwise supported by the record, could only be made with respect to the Gulf, Colorado & Santa Fe and Panhandle & Santa Fe railways, the only defendants which participate in the rates from these respective origin points; but as the short route is not over their lines and apparently little or none of the traffic from Tucumcari is handled by them, it is evident that these defendants do not control the rates from that point and their withdrawal from participation therein would not benefit complainant.

In support of the alleged unreasonableness of the rate, complainants cite lower rates to Galveston from contiguous Texas points and rates from certain points in Colorado, Missouri, Illinois, and other states. Defendants contend that the Glen Rio-Galveston component of the rate assailed is unduly low and that the aggregate rate from Tucumcari to Galveston is shown to be reasonable in comparison with various exhibited rates applying through territory of alleged greater traffic density than the territory between Tucumcari and Galveston. The exhibits offered include rates principally from Oklahoma, Arkansas, and Kansas to Galveston, stated to represent an average haul of 684 miles; and the resulting ton-mile revenue of 12.7 mills is compared with the revenue under the 41-cent rate from Tucumcari to Galveston of 10.8 mills over the short route and 9.3 mills for the haul of 879 miles over the route generally used, through El Reno. The exhibits also include rates from various New Mexico points to Kansas City and Galveston, generally on a higher basis than the rate assailed. With a few exceptions, the rates cited from New Mexico points to Galveston apply from stations on the Chicago, Rock Island & Pacific Railway, which rates are constructed on lowest combination. The fairness of these comparisons is challenged by complainants who assert that practically all the New Mexico wheat is shipped to Galveston for export, that export rates, lower than the exhibited rates apply from many of the points cited and that the exhibited rates therefore, in great measure, represent merely paper rates.

In *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, we prescribed reasonable rates to be observed as maxima for the transportation of various commodities, including wheat, between Shreveport, La., and points in Texas, and ordered the removal of undue prejudice found to exist against Shreveport, La. The intrastate rate from Glen Rio to Galveston was established by the carriers to remove such undue prejudice. That case has been

reheard and affirmed so far as the rates on wheat are concerned, 48 I. C. C., 312. This rate is based on a graded scale up to 250 miles for hauls in common-point territory, and on a set of differentials for hauls in the western portions of Texas, known as differential territory. Prior to June 25, 1918, the rate from Glen Rio to Galveston was 22 cents, 19 cents from Amarillo to Galveston, with a differential of 3 cents added for the distance of 71.6 miles from Glen Rio to Amarillo. The present rate of the Santa Fe system lines from Texico, which is also based on the decision in the *Shreveport Cases*, *supra*, is 27 cents.

The record does not warrant a finding that the rate in question should be based upon an extension of the so-called Shreveport scales. Neither does it warrant the approval of a combination rate constructed upon the assumption that the Glen Rio-Galveston factor is unduly low and that an excessive spread is therefore justified for the additional distance beyond the state line. The rate from Krider, N. Mex., a point on the Atchison, Topeka & Santa Fe Railway, 45 miles west of Texico and apparently almost due south from Tucumcari, which rate applies for the one-line haul over the Santa Fe system lines, is 34.5 cents or 7.5 cents over the rate from Texico.

Upon consideration of all the facts of record, we are of opinion that a sufficient basis for a finding of undue prejudice is not presented, but we find that the rate assailed is and for the future will be unreasonable to the extent that it exceeds or may exceed a rate of 38 cents per 100 pounds, which is 10 cents in excess of the rate from Glen Rio, subject to the increase authorized in *Increased Rates*, 1920, *supra*.

From stations on the Rock Island system lines between Tucumcari and Dalhart, Tex., the rates grade up from 41 cents at Tucumcari to 42.5 cents at Mater, N. Mex., and from that point grade down to 29 cents at Dalhart. Apparently the traffic from stations east of the New Mexico-Texas state line is routed through Dalhart, but as traffic from the New Mexico points is routed through Tucumcari the rates from stations north of Mater, to and including Naravisa, N. Mex., from which the rate is 38 cents, are in contravention of the long-and-short-haul provision of the fourth section. There were set for hearing with this case:

Applications filed by and on behalf of carriers named below, (The Chicago, Rock Island & Pacific Railway Company) which ask for relief from the provisions of the fourth section of the act to regulate commerce as amended to charge rates for the transportation of wheat from points in New Mexico on the C., R. I. & P. Ry. to Galveston which are higher for shorter than for longer distances over the same lines or routes in the same direction.

On April 8, 1920, prior to the hearing, an assistant general freight agent of the Rock Island was advised by wire as follows:

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Commission unable to locate specific application of your company covering rates involved. If application was filed by your company you should be prepared to furnish number and to justify rates involved which contravene the fourth section.

At the hearing the Rock Island was unable to give the numbers of the applications protecting the departures from the fourth section but subsequent to the hearing that road advised that they were covered by the following fourth section applications: No. 1 of E. Wyatt, agent, I. C. C. No. 1046; No. 60 of the Rock Island, I. C. C. No. 177; and No. 381 of the Rock Island, I. C. C. No. 11053. An examination of our records indicates that none of these applications protects the departures here presented nor are we able to locate any other application protecting them. The Rock Island explains that the departures in question were due to its desire to obtain the longer haul on traffic from the New Mexico points north of Mater by moving the traffic through Tucumcari rather than through Dalhart. As these departures are not protected by an appropriate fourth section application they are unlawful and should be eliminated promptly.

An appropriate order will be entered.

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No. 11367.  
BENWOOD & WHEELING CONNECTING RAILWAY  
COMPANY  
v.  
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS  
RAILROAD COMPANY ET AL.

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*Submitted January 12, 1921. Decided June 23, 1921.*

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1. Benwood & Wheeling Connecting Railway Company found to be a common carrier of property subject to the act to regulate commerce lawfully entitled to receive divisions of joint rates or absorptions of switching charges under appropriate tariff provisions, such divisions or absorptions to be reasonable.
2. Basis for payment by Benwood & Wheeling Connecting Railway Company for use or detention of foreign cars on its line prescribed.

*Charles MacVeagh and Charles S. Belsterling* for complainant.  
*James Stillwell, Guernsey Orcutt, C. R. Webber, Andrew P. Martin, and Edward Briggs* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

*MEYER, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed and oral argument had.

Complainant, Benwood & Wheeling Connecting Railway Company, hereinafter called the Benwood, operates a short railroad along the Ohio River at Benwood, W. Va., where it performs terminal switching services to and from trunk lines, defendants herein. By petition filed March 27, 1920, it asks that we determine whether it is a common carrier subject to the interstate commerce act, entitled to receive divisions out of joint rates or absorptions of switching charges.

The line of the Benwood extends from Forty-eighth street, Wheeling, W. Va., to Fourth street, Benwood, a distance of about a mile. It operates 6.95 miles of standard-gauge track, 3.08 miles of which are main track and 3.87 miles, spurs and sidings. The evidence is that the Benwood owns all of this track and the right of way, but that company's annual reports indicate that 0.79 mile of main track

and 0.5 mile of spur tracks and siding is leased from the Baltimore & Ohio Railroad. Its equipment consists of 9 locomotives, 7 flat cars, 8 gondolas, 10 dump cars, and 1 scale test car, none of which is interchanged.

The Benwood was incorporated January 30, 1900, under the laws of West Virginia. Its stock, except directors' shares, is all held by the National Tube Company, hereinafter called the tube company, a subsidiary of the United States Steel Corporation. All officials of the Benwood are also officials of the tube company, and their total salaries are paid by the latter. The general superintendent of the Benwood is general superintendent of the Lake Terminal Railroad and McKeesport Connecting Railroad, also subsidiaries of the United States Steel Corporation, and his salary is apportioned between the three companies. Operation of the road is conducted by a superintendent and other employees who have no connection with any other company. The Benwood is operated independently of the tube company and separate accounts are kept.

The cost of the property owned by the Benwood as shown on its books December 31, 1919, was \$366,316.23. An estimated value placed on the property for the trunk lines in 1908 by a committee of engineers, plus additions and betterments and less depreciation, amounted to \$74,095.85 on June 30, 1911, and \$325,101.84 on December 31, 1919.

On January 1, 1914, the Benwood operated over spur tracks owned by the tube company on which freight was loaded and unloaded for that company. These tracks, aggregating 7.758 miles, were then maintained by the Benwood in accordance with a lease which has since been canceled. They are now maintained by the tube company. A small portion of the spurs is used for placing cars in interchange service.

The main tracks of the Benwood are laid with 70, 80, and 100 pound rails, and its tracks and roadbed are in such condition that trunk line power and equipment could safely operate over them.

The Benwood is taxed as a common carrier by the state of West Virginia, and complies with state and federal laws governing common carriers. It was formerly, but is not now, a member of the American Railway Association. It is governed by the national car demurrage rules.

The Benwood collects demurrage from shippers for itself in accordance with its published tariffs. Prior to March 1, 1914, it paid per diem for the use of foreign cars while on its line and was allowed a four-day switching reclaim. Since that time no settlement has been made with the trunk lines, the latter claiming the right to assess demurrage directly against shippers on the Benwood. This matter is now before the Commission in docket 10174 and Sub-No.

1, *National Tube Co. v. P., C., C. & St. L. R. R. Co.* The Benwood issues switching tickets and transfer slips but no bills of lading. Outbound interchange traffic is weighed by it and the weights are accepted and used by the trunk lines.

The Benwood files its tariffs and annual reports with us and with the West Virginia Public Service Commission, and the latter in a recent proceeding held the Benwood to be entitled to "a reasonable and equitable arbitrary or portion of the rate charged by the trunk lines." Its accounts are kept as required by us.

The Benwood's trunk line connections are the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, the Baltimore & Ohio, the Wheeling & Lake Erie, and the Wheeling Terminal Railroad Company.

Complainant's claim to a common-carrier status, aside from the form of its organization and its compliance with requirements relative to reports, tariffs, and accounts, is based upon its contention that it has two public team tracks and actually serves nonproprietary industry. The Benwood maintains a track upon the tube company's property which it has designated a place for loading and unloading traffic, and it has similarly designated a portion of its main line where it crosses a public highway. It asserts its willingness to serve the public at these points. During April, May, and part of June, 1920, 526 cars aggregating 21,015 tons of traffic, principally coal brought by the tube company in automobile trucks from adjacent mines, were handled from the former of these so-called team tracks, nine cars of which were for the Semet-Solvay Company. The only traffic handled at the street intersection designated a team track was proprietary traffic brought from freight stations of other lines by truck and placed upon complainant's cars for distribution within the plant, because there was no crossing over the Benwood's tracks by which the trucks could enter the plant. Defendants question the applicability of the term team track to these loading points and point out that the Benwood superintendent in the pending proceeding, heretofore referred to, testified that the Benwood had no team tracks.

The principal industry served is the tube company, whose plant covers an 80-acre area containing blast furnaces, rolling mills, steel works, and other buildings, and which maintains and operates an extensive system of standard-gauge track in addition to that operated by the Benwood. These tracks are used by the Benwood for the placement of cars for loading and unloading. The tube company also operates a narrow-gauge system, over which it moves material between the various departments of the plant. The only traffic carried in addition to that for the proprietary industry is



handled for the Semet-Solvay Company, which is engaged in the manufacture of coke and the by-products thereof. That company's plant is located on the property of the tube company, and the evidence shows that it is a necessary adjunct to the operation of the proprietary business. It purchases its coal from the proprietary company and disposes of all of its principal product to that company. The Semet-Solvay Company is not affiliated with the United States Steel Corporation or any of its subsidiaries.

The following analysis of traffic for the calendar year 1918 is said to be representative of normal conditions:

	Tons.	Cars.	Revenue.
Interchange service:			
Between controlling industry and connecting carriers.....	1,334,324	26,868	\$137,583.43
Between independent industries and connecting carriers.....	6,526	224	730.94
Plant and interplant service:			
For controlling or affiliated industries. (The Benwood & Wheeling Railway performs only interplant or local service).....		40,843	123,962.00
Local switching:			
Between controlling or affiliated industries and other industries, team tracks, or stations.....		7,506	22,518.00
Less-than-carload traffic:			
For controlling or affiliated industries.....	662	99	99.00
For other industries and public.....	27	3	3.00
Other revenue.....			

Approximately 89 per cent of the interchange traffic handled by the Benwood is interstate.

The switching performed by the Benwood for the tube company does not differ from that which would be performed by the trunk lines if they served the tube company directly. Interchange is made with the trunk lines in their interchange yards an appreciable distance beyond the junction points, and the service performed by the Benwood consists of switching the cars between these yards and various points within the plant. It also performs interplant switching for the tube company at published rates. It has no passenger or express business, but handles less-than-carload traffic in trap cars. It does not maintain a freight station.

The average length of haul performed by the Benwood is given as 1 mile, of which 0.625 mile is over its own tracks, 0.25 mile over plant tracks, and 0.125 mile over tracks of its connections.

For 10 years or more the Benwood was compensated by the trunk lines at 10 cents per ton for the interchange services rendered on Wheeling district coal traffic, but April 1, 1914, they ceased to absorb the Benwood's charges, and until June 9, 1916, shippers and consignees paid the 10 cents in addition to the prevailing district rate. On the latter date the trunk lines issued tariffs absorbing 4.5 cents per ton of the Benwood's charges on all traffic except shipments of iron ore from lower-lakes points to the tube company's Riverside works on which traffic no charge was or is absorbed.

The Benwood's published charge for plant switching and local switching is \$3 per car; for reswitching \$1.50 per car; and for switching between trunk lines \$3.50 per car. Less-than-carload traffic is handled in trap cars at 10 cents per ton, minimum \$1 per car. The testimony is that these charges are less than those of other lines for similar services in the same rate district. For instance, the Wheeling Terminal Railroad's charge for local switching in Benwood ranges from 20 cents to 60 cents per ton and for performing similar service for its connections at Benwood 30 cents to 60 cents per ton.

Defendants contend that as 99.5 per cent of its traffic is handled for the proprietary industry the Benwood is a plant facility. They argue that we can not hold it to be a common carrier because a violation of the "commodities clause" of the interstate commerce act would result.

We have held that the payment by an industrial railway of per diem with or without switching reclaims is not the proper basis for settlement by such a railway for the use or detention of foreign cars upon its line. *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551.

Upon consideration of the record we find that the Benwood & Wheeling Connecting Railway is a common carrier of property subject to the interstate commerce act, and that it may lawfully receive from its trunk line connections divisions of joint rates or absorptions of its charges on interstate shipments under appropriate tariffs, such divisions or absorptions to be reasonable. The present record does not afford a basis for determining the amounts which it may properly receive and a specific and complete statement of the present arrangement or any other basis agreed upon must be filed with us immediately upon its adoption.

We further find that adjustment of charges for use and detention of foreign cars upon its lines by the Benwood & Wheeling Connecting Railway should be made upon the basis found reasonable in *Birmingham Southern R. R. Co. v. Director General*, *supra*.

No order is necessary.

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No. 11358.  
LOUISVILLE CEMENT COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted December 14, 1920. Decided June 16, 1921.*

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Rates on cement, in carloads, from Sellersburg, Ind., to points in Kentucky and Tennessee, found unreasonable. Reparation awarded.

*Norman & Graham and George F. Graham for complainant.  
Alex. M. Bull and John F. Finerty for defendant.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ALTOHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached a conclusion differing from that suggested by him.

Complainant, a corporation manufacturing cement at Sellersburg, Ind., alleges that the rates charged on shipments of cement, in carloads, from Sellersburg to certain destinations in Kentucky and Tennessee were unreasonable and unduly prejudicial as compared with rates from plants of complainant's competitors at Kosmosdale, Ky., and Mitchell, Ind. We are asked to award reparation to the basis subsequently established. Rates will be stated in cents per 100 pounds.

Sellersburg is on the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter referred to as the Panhandle, about 12 miles north of Louisville, Ky. Kosmosdale and Mitchell are, respectively, 18 miles southwest and 68 miles northwest of Louisville. Complainant's shipments, aggregating 1,656,460 pounds, moved during the period from July 17 to October 10, 1918, inclusive. One shipment to Williamstown, Ky., moved over the Panhandle to Cincinnati and the Cincinnati, New Orleans & Texas Pacific beyond; and one to Elkton, Ky., over the Panhandle to New Albany, Ind., Southern and Louisville & Nashville beyond. The other shipments all moved over the Panhandle to Louisville and the Louisville & Nashville, Illinois Central, Louisville, Henderson & St. Louis, or Southern beyond.

Combination rates based on Ohio River crossings were applicable. Shipments to Elkton and Lewisport, Ky., apparently were undercharged.

On June 25, 1918, following general order No. 28 of the Director General of Railroads, the two components of the combination rates then in effect were each increased 2 cents. On July 2, 1918, freight rate authority No. 10, issued by the Director General provided that the 2 cents should be added to the combination and not to each factor, but the rates from Sellersburg were not reduced accordingly until October 14, 1918. Meantime the shipments moved, and we are asked to award reparation to the basis of the rates then established.

Complainant contends that the rate relationships previously existing between Sellersburg, Mitchell, and Kosmosdale were disrupted by the manner in which the respective rates were increased on June 25. From Mitchell to Winchester, Shelbyville, Eminence, Harrodsburg, and Williamstown, Ky., joint rates applied based on an arbitrary of 4.5 cents over the rates from Louisville. From Kosmosdale to Winchester joint rates applied and to Greenville, Hodgenville, and Marion, Ky., the movement was over the Illinois Central at its local rate. From Mitchell and Kosmosdale to the other destinations to which complainant's shipments moved the rates were combinations on Ohio River crossings. The joint rates were increased 2 cents under general order No. 28, but the separate components of the combinations were each increased 2 cents under that order, as in the rates from Sellersburg. The tariff naming the components from Mitchell to Ohio River crossings was amended pursuant to freight rate authority No. 10 on September 7, 1918, but apparently the tariffs naming the components from the crossings, and from Kosmosdale, were not so amended until after complainant's shipments had moved. It thus appears that the relationships between complainant's rates and those of its competitors which existed on June 24, 1918, were disturbed in certain instances only and in most instances remained undisturbed throughout the greater portion of the reparation period.

Complainant compares the rates assailed with those prescribed for application in western Missouri, eastern Kansas, eastern Nebraska, and eastern South Dakota in *Western Cement Rates*, 48 I. C. C., 201, plus 2 cents under general order No. 28. The transportation conditions are not shown to be similar. In *Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co.*, 42 I. C. C., 406, 412, we prescribed specific rates on cement from Mitchell to certain Kentucky junctions for distances ranging from 99 to 178 miles, and a maximum scale of rates for application to certain intermediate destinations for distances not in excess of 250 miles. Subsequently cement rates were

increased generally by 1 cent as authorized in our order of March 19, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and by 2 cents pursuant to general order No. 28. The following table, compiled largely from a statement submitted by defendant, shows the rates in effect on June 25, 1918, from Sellersburg, Mitchell, and Kosmosdale to the destinations of complainant's shipments, and what the rates would have been for corresponding distances from Sellersburg under that distance scale increased by 3 cents:

Destinations.	From Sellersburg.				From Mitchell.		From Kosmosdale.	
	Distance.	Rate applicable.	Rate sought.	Distance scale.	Distance.	Rate.	Distance.	Rate.
<b>On Louisville &amp; Nashville:</b>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Shelbyville, Ky.....	42	13	11	.....	99	10	49.5	12
Eminence, Ky.....	51	13	11	.....	108	10.5	56.5	12
Lebanon, Ky.....	78	14	12	.....	135	14.5	85.5	13
Stanford, Ky.....	115	14	12	11.5	172	16.5	122.5	14
Winchester, Ky.....	126	14	12	12	183	13.5	123.5	12
Ewing, Ky.....	154	16	14	13	211	17.5	161.5	15
Nepton, Ky.....	156	16	14	13	213	17.5	163.5	15
Elkton, Ky.....	186	20.5	18.5	14	.....	.....	198.5	21
Westmoreland, Tenn.....	189	15	16	14	246	19.5	194.5	17
Barbourville, Ky.....	199	17	15	14	256	18.5	205.5	17
Scottsville, Ky.....	205	18	16	15	262	19.5	212.5	17
Springfield, Tenn.....	206	18	16	15	265	19.5	213.5	17
Jackson, Ky.....	209	18	16	15	267	19.5	215.5	17
Saxton, Ky.....	210	17	15	15	267	19.5	217.5	17
College Grove, Tenn.....	226	18	16	16	283	19.5	233.5	18
Harlan, Ky.....	253	19	17	.....	310	20.5	260.5	18
Hazard, Ky.....	253	19	17	.....	311	20.5	261	18
Seco, Ky.....	306	20.5	18.5	.....	363	21.5	313.5	19.5
<b>On Illinois Central:</b>								
Hodgenville, Ky.....	76	15	13	.....	132.5	16.5	46	9
Greenville, Ky.....	151	19	17	13	202.5	20.5	116	13
Marion, Ky.....	217	19	17	15	274.5	20.5	137	14
<b>On Louisv. Hend. &amp; St. Louis:</b>								
Lewisport, Ky.....	107	20	18	11.5	164	21.5	114.5	19
<b>On Southern:</b>								
Harrodsburg, Ky.....	96	15	13	11.5	163	13	108.5	14
<b>On Cinc., N. Orleans &amp; Tex. Pac.:</b>								
Williamstown, Ky.....	129	17.5	15.5	12	170	12.5	156.5	.....

The ton-mile earnings at the rates assailed are high compared with those yielded by some of the rates from Mitchell and Kosmosdale. The joint rates from the latter points to certain destinations yielded from 13.6 to 39 mills, whereas the earnings at the combination rates from Sellersburg to the same destinations ranged from 17.5 to 64.3 mills.

Defendant contends that it was originally intended to apply the specific increases authorized by general order No. 28 to each component of combination rates; and that the subsequent reduction was merely for the purpose of restoring former relationships, and should not be made the basis for an award of reparation. The reasonableness of rates can not be determined by a construction of general order No. 28. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 57 I. C. C., 739, 741.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates subsequently established on October 14, 1918; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

The undue prejudice, if any existed, was subsequently removed, and complainant has not shown that it was damaged thereby.

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INVESTIGATION AND SUSPENSION DOCKET No. 1327.  
CLAM AND MUSSEL SHELLS FROM CLOVERPORT AND  
OTHER KENTUCKY POINTS.

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*Submitted May 13, 1921. Decided June 27, 1921.*

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Proposed increased rates on mussel or clam shells, in carloads, from Cloverport and other Kentucky points on the Ohio River to interstate destinations found justified. Order of suspension vacated.

*James R. Skillman* for Louisville, Henderson & St. Louis Railway Company, respondent.

*David B. Phelps* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

By schedules filed to become effective April 25, 1921, respondents propose to cancel their joint commodity rates on mussel or clam shells, in carloads, from Cloverport and other points in Kentucky on the Ohio River served by the Louisville, Henderson & St. Louis, hereinafter called respondent, to destinations in Indiana, Illinois, Iowa, Missouri, Nebraska, and Wisconsin. This would make applicable combination rates which are higher. Upon protest of a dealer in shells and manufacturer of pearl-button blanks at Cloverport the schedules were suspended until August 23, 1921. Rates will be stated in cents per 100 pounds.

Mussel or clam shells are used chiefly for the manufacture of pearl buttons. Joint rates were established in 1902, at a time when shells were being gathered in considerable quantities from the Ohio River between Louisville, Ky., and Evansville, Ind. Protestant operates a shell-cutting plant at Cloverport and ships pearl-button blanks and crushed shells. Prior to the establishment of his plant in 1912 protestant purchased shells and shipped them to Muscatine, Iowa, the largest pearl-button market in the United States, and other cutting and button-manufacturing points on the upper Mississippi River. The shell and pearl-button business was affected adversely during the war by the fact that labor formerly employed in gathering shells was attracted to other fields. The beds of the Ohio River

are considerably depleted, but not exhausted. Only one carload of uncut shells has moved from Cloverport since 1918, and the probability of further movement depends entirely upon market conditions. The present rate from Cloverport to Muscatine, 447 miles over respondents' lines, is 34.5 cents. If the proposed cancellation becomes effective the applicable rate would be a combination of 41.5 cents, composed of 11.5 cents to Evansville and 30 cents beyond. The present and proposed rates yield, respectively, 15.4 and 18.6 mills per ton-mile, and 30.9 and 37.1 cents per car-mile, based upon a minimum weight of 40,000 pounds.

Respondent states that the present rates are depressed rates, made to meet water competition on the Ohio River and rail competition on the north bank, and that the expense of maintaining joint commodity rates to widely scattered destinations in order to provide for isolated movements of possibly one or two cars a year should not be required. The proposed increased rates would apply from 11 other points in the vicinity of Cloverport, but the only protest is from Cloverport.

Protestant's position is that he needs the present rates for the protection of his "general business," and that he furnishes the respondent enough traffic in pearl-button blanks and crushed shells to compensate it for the expense of maintaining joint commodity rates on clam shells. Pearl-button blanks and crushed shells take rates different from those under suspension. Their movement has no bearing on the reasonableness of the rates here in issue.

We find that the suspended schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.



No. 11525.

TRAFFIC BUREAU, CHAMBER OF COMMERCE, PHOENIX,  
ARIZ., ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC  
COMPANY, ET AL.

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*Submitted March 23, 1921. Decided June 18, 1921.*

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1. Rates on fresh fruits and vegetables, in mixed carloads, from points in California to Phoenix, Ariz., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.
2. Prayer for establishment of through routes and joint rates from northern California points by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific and its connections in Arizona, denied.

*Roland Johnston* for complainants.

*F. A. Jones* for Arizona Corporation Commission, intervener.

*E. F. Camp, G. H. Baker, Fred. H. Wood, C. W. Durbrow, Elmer Westlake,* and *Frank B. Austin* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

*ATCHISON, Commissioner:*

This case was made the subject of a proposed report and exceptions thereto were filed by complainants and intervener.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, and John F. Barker Produce Company, a corporation engaged in the wholesale fruit and produce business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of fresh fruits and vegetables from points in California to Phoenix were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act, and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation, and to establish through routes and joint rates from San Francisco and other points in northern California, by way of Phoenix, to Maricopa, Ariz., and all points east thereof on the line of the Southern

**Pacific Company and its connections in Arizona. The Arizona Corporation Commission intervened on behalf of complainants.**

Practically no evidence was offered to sustain the allegations of unjust discrimination and undue prejudice, and the allegation of a violation of the fourth section was abandoned at the hearing. Those issues therefore will not be further considered.

Complainants are chiefly interested in rates for the future, and claim reparation only on 25 shipments from the Los Angeles group made during the period from February 16 to August 16, 1920, inclusive. Although the rate attacked applies to fresh fruits and vegetables, in straight or mixed carloads, it does not appear that complainant receives straight carloads of fruits other than apples from California points. Complainants are making the rate on apples to Phoenix from Watsonville, Calif., the subject of a separate proceeding before us, and in this case directed their evidence to the rates on fresh fruits and vegetables in mixed carloads. Throughout this report the rates shown, except as otherwise noted, are those in effect prior to the general increases authorized by us on July 29, 1920, and apply per 100 pounds.

Phoenix is the only point in Arizona common to the Atchison, Topeka & Santa Fe Railway and the Southern Pacific lines. The Santa Fe serves Phoenix by means of a branch line which leaves the main line at Ash Fork, Ariz.; and from California reaches Phoenix over a branch line known as the Parker cut-off, which extends from the main line at Cadiz, Calif., to Wickenburg, Ariz., on the branch from Ash Fork. The Southern Pacific serves Phoenix through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa. By way of the Santa Fe route over the Parker cut-off the distance to Phoenix from San Francisco is 800 miles, and from Los Angeles, 489 miles. The distances from the same points to Phoenix by the Southern Pacific are 920 and 451 miles, respectively.

The greater part of the movement of fruits and vegetables to Phoenix consists of mixed carloads originating at Los Angeles. Of the 25 shipments made by the Barker Produce Company on which reparation is claimed, 23 were fresh fruits and vegetables, in mixed carloads, and 2 consisted of mixed fruits. All of the shipments originated at Los Angeles except one, and that moved from a Los Angeles group rate point. Of the shipments 16 were routed over the Santa Fe, and 9 over the Southern Pacific. The applicable commodity rate of 97 cents from the Los Angeles group was charged on these shipments. The corresponding rate from the San Francisco group was \$1.095.

The Los Angeles group extends south from Los Angeles 126 miles to San Diego, and includes the port of San Pedro and points east of  
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Los Angeles as far as Colton on the Southern Pacific and San Bernardino on the Santa Fe. The short-line distance from San Diego to Phoenix is, however, but 419 miles over the San Diego & Arizona Railway to El Centro, Calif., in connection with the Southern Pacific lines beyond. The San Francisco group includes points north of Barstow, and on the Southern Pacific extends to Marysville and other points in excess of 100 miles north and east of San Francisco.

Under the consolidated classification in western territory the rating accorded fresh fruits, in carloads, is third class, with the exception of cranberries, rated fourth class, apples and pears, rated fifth class, and melons, rated class C. Certain vegetables, including beets, cabbage, onions, pumpkins, turnips, and winter squash, are rated class C, while all other vegetables take fifth class, except celery and garlic, which are rated fourth class. Rule 10 of the classification provides that mixed carloads shall take the rating of the highest rated article in the mixture. By an exception to the classification, defendants make class C the rating on fresh fruits and vegetables generally applicable in the territory west of the Colorado and Texas gateways. However, the schedule which carries the rates in controversy contains a specific exception to the classification and current exception sheet which provides for fifth-class rating on fresh fruits and vegetables in straight or mixed carloads. The fifth-class rates which would have applied had no commodity rates been in effect were \$1.165 from San Francisco, and \$1.04 from Los Angeles.

Complainants suggest that the class-C rates of 81.5 cents from San Francisco and 69 cents from Los Angeles, or commodity rates equivalent thereto, would be reasonable to apply on fresh fruits and vegetables to Phoenix.

An exhibit of record compares rates on apples from Watsonville, Calif., and near-by points to certain points in California, Arizona, and New Mexico with the corresponding class-C rates. In nearly every case the apple rate cited is the same as or less than the class-C rate between the same points, except that to Phoenix the apple rates range from 114 to 136.2 per cent of the corresponding class-C rates. Fruit and vegetables in mixed carloads from the San Francisco group points take the same rate to Phoenix as do apples from Watsonville to the same destination. A similar exhibit showed apple rates from a number of points in the mountain-Pacific group to other points in that group which were the same as or less than the corresponding class-C rates. Other comparisons of record indicate that the earnings under the rates on fruits and vegetables to Phoenix are considerably higher than under those on similar commodities between points in Pacific freight tariff bureau territory for comparable distances, though several of such rates apply on melons or

root vegetables which normally take the class-C rates, and some others are apparently depressed by potential water competition.

The class-C rates from Shreveport, La., to Westbrook and El Paso, Tex., for distances of 461.5 and 837 miles, respectively, under the scale of rates prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, for single-line application, as increased on June 25, 1918, under general order No. 28 of the Director General of Railroads, are 48 cents and 67.5 cents. The carload commodity rates on fruits and vegetables prescribed in that case from and to the same points, as so increased, are ~~34~~ 34 and 49 cents, or 70.8 and 72.6 per cent, respectively, of the class-C rates.

The class rates to Phoenix from Los Angeles and San Francisco are the same as those from the same points to Maricopa and Tucson, Ariz. From comparisons introduced in evidence the class-C rates to Phoenix do not appear to be low.

In *Murray & Layne Co. v. S. P. Co.*, 59 I. C. C., 552, and in *Buxton-Smith Co. v. Director General*, 61 I. C. C., 623, we found the rates charged on fresh fruit and vegetables, in mixed carloads, from Los Angeles to Deming, N. Mex., and from San Francisco and Los Angeles to Bisbee and Douglas, Ariz., unreasonable to the extent that they exceeded named rates which in each instance were the same as the corresponding class-C rates. The table below compares the fresh fruit and vegetable rates from San Francisco and Los Angeles to Phoenix with those found reasonable in the cases mentioned, and with the rates on the same or similar commodities to other destinations from the same points of origin. The corresponding class-C rates are also shown. Except as otherwise noted the car-mile earnings are based upon an average loading of 29,000 pounds.

	Distance.	Commodity rates.			Class-C rates.		
		Rate.	Ton-mile earnings.	Car-mile earnings.	Rate.	Ton-mile earnings.	Car-mile earnings.
	Miles.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
Los Angeles to—							
Phoenix, Ariz.....	461	97	43.02	62.37	69	30.6	44.37
Bisbee, Ariz.....	608	192.5	30.43	44.12	92.5	30.43	44.12
Douglas, Ariz.....	629	195	30.5	44.22	95	30.5	44.22
Deming, N. Mex.....	723	104	28.77	41.72	104	28.77	41.72
El Paso, Tex.....	812	112.5	27.71	40.18	104	28.62	37.14
Albuquerque, N. Mex.....	888	104	23.42	33.96	104	23.42	33.96
Salt Lake City, Utah.....	784	94	23.98	34.77	80	20.41	29.59
		70	17.86	26.79	80	20.41	30.61
San Francisco to—							
Phoenix, Ariz.....	800	109.5	27.38	39.69	81.5	20.38	29.54
Bisbee, Ariz.....	1,092	104	19.05	27.62	104	19.05	27.62
Douglas, Ariz.....	1,107	104	18.79	27.24	104	18.79	27.24
Albuquerque, N. Mex.....	1,198	104	17.36	25.18	104	17.36	25.18
Deming, N. Mex.....	1,207	125	20.71	30.03	104	17.23	24.90
El Paso, Tex.....	1,208	125	19.29	27.97	104	16.05	23.27
Salt Lake City, Utah.....	819	94	22.95	33.28	70	17.00	24.79
		81.5	19.9	29.85	70	17.00	25.64

<sup>1</sup> Found reasonable in the *Buxton-Smith Case*, *supra*.

<sup>2</sup> Found reasonable in the *Murray & Layne Case*, *supra*.

<sup>3</sup> Vegetables, fresh, taking fifth class, including celery, garlic, sprouts, parsley, and peppers.

<sup>4</sup> Apples, fresh, in boxes.

<sup>5</sup> Based on minimum weight of 30,000 pounds.

As indicated by these comparisons, the rates on fresh fruits and vegetables to Phoenix are on a substantially higher basis than are the other commodity rates shown, and the class-C rates to Phoenix would be more nearly in line with such other rates. Also the rates from San Francisco to the Arizona and New Mexico points named are on a lower level than those from Los Angeles. Both the class-C rate and the commodity rate from San Francisco to Phoenix are but 12.5 cents over the corresponding rates from Los Angeles for an additional haul over the short line of 311 miles. Defendants state that potential water competition which was actual at one time is responsible for this condition.

Defendants insist that class C is not the normal classification for fruits and vegetables. It appears from the record that the provision of the class-C rating on such traffic in Pacific freight tariff bureau territory generally, by exception to the classification, is the outgrowth of the policy adopted by the carriers a number of years ago of making class-C rates applicable intrastate in California on fresh fruits and vegetables to avoid publishing a multiplicity of commodity rates on that traffic. Gradually this application of the class basis was extended throughout the above-named territory. Subsequently, when the class rates from California to Phoenix and other Arizona points were reduced, the carriers established commodity rates to those points on the basis of the former class-C rates. The class rates to Albuquerque were not reduced and, as shown in the table, the commodity rate and the class-C rate to that point are the same. The history of the classification and rate situation is more fully set forth in *Rates on Fruits and Vegetables*, 30 I. C. C., 56. That was an investigation and suspension proceeding and the finding there made was expressly stated to be without prejudice to further complaint as to the unreasonableness of commodity rates which did not exceed the former class-C basis.

So far as this record shows, there is no definitely established relationship between the rates on fruits and vegetables in mixed carloads and the class-C rates. At present the most frequent application of class-C rates to the transportation of fruits and vegetables occurs locally in California, where the movement of uncrated and unpacked fruit for short distances from the fields to packing houses and canneries is very heavy. We do not here decide that rates on the traffic and in the general territory under consideration are necessarily unreasonable to the extent that they may exceed the corresponding class-C rates, but upon the record before us we are of opinion that rates equivalent to the corresponding contemporaneously applicable class-C rates would have been reasonable for application to complainants' shipments of fruits and vegetables, in mixed carloads,

from Los Angeles group points, and that such rates will be reasonable to apply in the future to Phoenix from points in the Los Angeles and San Francisco groups. This record does not establish that the rates on fruits, in mixed carloads, are unreasonable.

Effective August 26, 1920, defendants increased the class-C rates to Phoenix from Los Angeles group points to 86.5 cents and from San Francisco group points to 102 cents, as permitted in our decision of July 29, 1920.

Complainants ground their request for the establishment of through routes from San Francisco and surrounding territory via Phoenix to Maricopa and points east thereof in Arizona upon the fact that the distance over the proposed route is about 50 miles less in each instance than over the Southern Pacific alone. At present, traffic from northern California destined to Maricopa and points beyond is transported directly by the Southern Pacific if it originates at a Southern Pacific point. If such traffic originates on the Santa Fe, it is hauled to the nearest junction point with the Southern Pacific and transported by that line to destination. The schedule containing the rates under attack carries instructions that shipments to Phoenix from Santa Fe points should be routed the entire distance over that line, and that shipments from Southern Pacific points should be routed Southern Pacific to Maricopa, Arizona Eastern beyond. If the route through Phoenix were established, traffic originating at or near San Francisco on the Southern Pacific would be diverted to the Santa Fe at Bakersfield or Mojave, Calif., transported by the latter to Phoenix, and would be there turned over to the Arizona Eastern for delivery to the originating carrier at Maricopa. This would replace a one-line movement by a joint-line haul, including two branch-line hauls; would involve the delay and expense of three terminal interchanges, and would force the Southern Pacific to short haul itself by some 585 miles. Between Bakersfield and Mojave the Southern Pacific and Santa Fe jointly operate a single-track line for a distance of approximately 68 miles. When congestion occurs, traffic originating in northern California in many instances is diverted to the coast line of the Southern Pacific. On traffic so moving there would be little, if any, mileage saved by requiring a subsequent diversion to the Santa Fe.

The branch line of the Santa Fe from Cadiz to Wickenburg is 195 miles in length, and is of comparatively light construction, which restricts the train tonnage limit to 1,200 gross tons from Cadiz to Parker, Ariz., and 800 gross tons east of Parker. The record indicates that complainants desire the proposed route not so much as a matter of service, but in order to require the carriers to hold rates to Phoenix down to the level of the rates to points on the main line

of the Southern Pacific beyond. The establishment of the through routes sought has not been shown to be necessary or desirable in the public interest.

We find that the rates on fresh fruits and vegetables, in mixed carloads, from Los Angeles and points taking the same rates, to Phoenix were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed 69 cents per 100 pounds prior to August 26, 1920, and 86.5 cents per 100 pounds thereafter; and that the rates on like traffic from San Francisco, and points taking the same rates, to Phoenix are and for the future will be unreasonable to the extent that they exceed or may exceed 102 cents per 100 pounds. We further find that complainant John F. Barker Produce Company received shipments of fresh fruits and vegetables, in mixed carloads, as previously described herein and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. This complainant should comply with rule V of the Rules of Practice.

The prayer for the establishment of through routes and joint rates from points in northern California by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific and its connections in Arizona is denied.

An appropriate order will be entered.

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No. 10745.<sup>1</sup>

NATIONAL WHOLESALE GROCERS' ASSOCIATION OF  
THE UNITED STATES

v.

DIRECTOR GENERAL, ALABAMA & VICKSBURG  
RAILWAY COMPANY, ET AL.

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*Submitted January 5, 1921. Decided June 22, 1921.*

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1. Practice of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars not shown to result in undue prejudice to complainants or unduly to prefer the packers.
2. The various peddler-car rates and rules are not shown to be unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing-house products in peddler cars in southwestern territory found to be unduly prejudicial to complainants and unduly preferential of the meat packers in so far as said scale of rates applies on lard substitutes, cottonseed cooking oil, peanut cooking oil, corn cooking oil, soya-bean cooking oil, canned meats, canned soups, chicken tamale, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients.
3. Various rules applicable on mixed carloads of fresh meats and packing-house products found unjust, unreasonable, and unduly prejudicial. Reasonable and uniform mixing rules prescribed for the future.

*Clifford Thorne, Breed, Abbott & Morgan, Dana T. Ackerly, R. C. Fulbright, and Ralph Merriam* for National Wholesale Grocers' Association; and *Edgar Watkins* for Southern Wholesale Grocers' Association.

*James Stillwell, K. F. Burgess, L. H. Cocke, C. W. Burg, and N. W. Proctor* for defendants.

*R. D. Rynder* for Swift & Company; *H. K. Crafts* for Armour & Company; *George P. Boyle* for Wilson & Company, *George A. Hormel & Company*, and *Kingan & Company*; *John S. Burckmore* and *Luther M. Walter* for Morris & Company; and *W. E. McCornack* for Interior Iowa Packers, interveners.

*Davies & Jones* for various dairy interests; *Thomas G. Baillie* for attorney general, state of Michigan; *R. C. Fulbright* for North Texas Wholesale Grocers' Association, South Texas Wholesale Grocers' Association, Arkansas Wholesale Grocers' Association, and Magnolia Provision Company; *George A. Henshaw* for Oklahoma

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<sup>1</sup> This report also embraces No. 10745 (Sub-No. 1), Southern Wholesale Grocers' Association v. Southern Railway Company, Director General, as Agent, et al, 62 I. C. C.



Wholesale Grocers' Association; and *W. P. Huston* for Missouri-Kansas Wholesale Grocers' Association, interveners.

#### REPORT OF THE COMMISSION.

##### *ATCHISON, Commissioner:*

These cases are closely related, were heard together, and will be disposed of in one report.

The complainant in each case is a voluntary association of wholesale grocers. The members of the National Wholesale Grocers' Association of the United States, while located generally throughout the country, are situated principally in official classification territory and north of the Kansas-Oklahoma state line. The members of the Southern Wholesale Grocers' Association for the most part are located in southern classification and southwestern territories.

The complaints were filed during the period of federal control. They name as defendants the Director General of Railroads and the principal railroad companies of the country. In substance each alleges that the schedules and practices of the defendants are unreasonable and afford to the meat-packing industry, and particularly to the larger meat packers, undue preferences and advantages in the transportation service accorded to shipments made by such packers, and in the rates, rules, and regulations applicable thereto, and result in undue prejudice and disadvantage to the wholesale grocers and jobbers with respect to articles in which both the meat packers and wholesale grocers deal.

The complaint in Sub-No. 1 includes a prayer for reparation, but no attempt was made to prove any specific pecuniary damage, and no ground for an award is shown. Therefore no further consideration will be given that branch of the case.

Petitions in intervention in support of the complaints were filed by various wholesale grocers' associations in Missouri-Kansas, south Texas, north Texas, Iowa-Nebraska, Oklahoma, and Arkansas; by the attorney general for the state of Michigan on behalf of the people of that state; by the Wisconsin Independent Cheese Dealers' Association, Magnolia Provision Company, National Dairy Products Committee, National Association of Ice Cream Manufacturers, International Milk Dealers' Association, Dairy Products Association of the Northwest, National Creamery Dairy Makers' Association, and 13 other dairy-product associations or companies located in Illinois, Indiana, Ohio, Kansas, Nebraska, Minnesota, Colorado, and Wisconsin.

Petitions in intervention in opposition to the complaints were filed by Swift & Company, Armour & Company, Wilson & Company, Morris & Company, and Cudahy Packing Company, large meat pro-

ducers and packers, hereinafter referred to as the large packers; by John Morrell & Company, T. M. St. Clair & Company, Jacob E. Decker & Sons, Rath Packing Company, and Iowa Packing Company, known as the interior Iowa packers; and by George A. Hormel & Company and Kingan & Company. Industries of this type will be referred to simply as packers.

While these cases are nominally brought against the Director General and the railroads, the intervening packers have undertaken to justify and defend the conditions against which the complaints are brought. Counsel for complainant in No. 10745 in their brief state that the chief issues between the wholesale grocers and the packers are (1) whether the service furnished in the transportation of fresh meats and packing-house products in the packers' refrigerator cars shall automatically be extended to all other commodities which the packers may desire to ship in such cars, and (2) whether the special commodity rates and minima applicable to fresh meats and packing-house products shall be accorded to all such other articles when they are shipped with fresh meats and packing-house products.

The gravamen of the complaints with respect to service is two-fold. The complainants contend (1) that by shipping unrelated articles, as hereinafter explained, in the packers' peddler and branch-house cars with fresh meats and packing-house products, the packers obtain more speedy transportation and more prompt delivery than if such articles were shipped by them through the carriers' freight houses in the regular merchandise cars ordinarily used by the wholesale grocers and jobbers, and (2) that the carriers unjustly discriminate against the wholesale grocers in their failure to maintain less-than-carload refrigerator service to many points which are served by the packers' peddler cars. The complainants do not demand the discontinuance of the packers' peddler or branch-house cars, but ask that the packers be forbidden to ship in such cars commodities which are not the products of slaughtered animals. This demand, they say upon their brief, is the issue between the packers and the wholesale grocers in this controversy, stated in one sentence. However, the issues raised in the pleadings and upon which the parties have been heard are not so simple. The question of the exclusion of the unrelated articles from the refrigerator cars necessarily leads to a consideration of the service afforded the packers and the grocers, the peddler-car rules, and the mixture rules applicable to carloads of fresh meats and packing-house products.

At the hearing and upon brief counsel for complainant National Wholesale Grocers' Association proposed as a solution of the controversy that all articles other than fresh meats and packing-house products should be excluded from the cars handling either carload or less-than-carload traffic in fresh meats and packing-house prod-

ucts; and, further, that the various lists of fresh meats and packing-house products now prevailing in the tariffs of the carriers throughout the United States should be revised and made uniform by excluding therefrom the following commodities: mincemeat, canned meats with vegetable ingredients, lard substitutes and lard compounds, canned soups, soap, and butter substitutes, when such articles do not contain more than 20 per cent beef, pork, or mutton ingredients; also butter, renovated butter, cheese, eggs, canned chicken tamale, canned spaghetti-meat chili, canned pork and beans, cottonseed cooking oils, peanut cooking oils, soya-bean cooking oils, and corn cooking oils. The articles which would be eliminated from the packers' cars under the above proposal are referred to as the unrelated articles.

#### SERVICE AFFORDED PEDDLER AND MERCHANDISE CARS.

Before the refrigerator car was developed, nearly 60 years ago, live cattle and hogs were transported from the territory of surplus production in the west to the packing houses in the eastern cities. There the cattle were slaughtered, and were consumed either in those cities or within the near-by region to which the meat could be distributed without spoiling. Because the carriers refused to construct refrigerator cars at first, they were built by the packers. The use of these cars made it practicable to slaughter food animals near the points where they were produced or fattened, and to ship fresh meat from the abattoir to distant points. Later the railroads built refrigerator cars, but such cars were not suitable for the transportation of fresh beef. The car intended to transport fresh meats under refrigeration must be so built that carcasses of beeves can be hung by hooks from rails attached to the roof of the car, as loading on the floor spoils the meat. The beef car, to produce sufficient refrigeration, must have tanks in which can be placed crushed ice mixed with a predetermined percentage of salt. When the carcasses are suspended by hooks from the roof, some space is left in the lower part of the car. The packers utilize this space by loading therein cured meats or any other kind of freight which may require refrigeration, or such non-perishable freight as will withstand refrigeration and will not contaminate the perishable products in the car.

The two principal methods of transporting perishable meat products of the packing houses to the various points of distribution and consumption are by the establishment of branch houses and by shipping directly to the retailer in a refrigerator peddler car.

The record shows that the large packers, interveners, operate 58 packing houses, 1,116 branch houses, and 15,454 refrigerator cars specially equipped for the transportation of fresh meats. Branch houses are located in 495 cities, and are distributed as follows: In the eastern

territory, including the western termini of eastern trunk lines, 506; in central territory, 188; in southern territory, 282; and in western territory, 186.

The interior Iowa packers' operations are confined to a small part of western trunk line territory. They maintain branch houses and peddler-car routes with their own refrigerator cars, but upon a more limited scale than the large packers. They are subject to the same tariff rules with respect to peddler-car minimums and penalties as the large packers.

George A. Hormel & Company has a packing plant at Austin, Minn. In addition to the products of slaughtered animals, it deals in and ships lard substitutes, butterine, cheese, pickles, and peanut butter, which are transported in peddler cars. It is the intention of this company to engage in the business of canning corn. The land in the vicinity of its plant is especially adapted to growing corn for canning purposes. The dull season of the year in the packing business coincides with the time for canning vegetables, and the canning business would be the means of keeping the working force together. It is not expected that the canned corn will be shipped in carload lots, but in mixed consignments in peddler cars.

Kingan & Company's principal plant is located at Indianapolis, Ind. It operates 12 peddler cars weekly from Indianapolis, which serve 126 cities and towns and 1,617 dealers, and 28 peddler cars from Richmond, Va., which serve 812 cities or towns and more than 2,000 dealers in Virginia, North Carolina, South Carolina, and Georgia. It manufactures butterine and deals in lard compounds and cheese. The same contentions with respect to the service accorded the peddler cars are made by these packers as by the large packers.

Packing houses are located at points convenient for the assembling of live animals for slaughter and for the distribution of fresh meats and packing-house products to consuming points. Branch houses are located at large centers where the density of population requires a constantly available supply of fresh and cured meats. The movement from the packing houses to the branch houses is in carload quantities. The branch houses are fully equipped with refrigeration facilities, but the radius of distribution therefrom is limited. Throughout the country are many small communities outside the areas served by branch houses. Many of these are not served by carrier refrigerator cars, and would be left without means of securing fresh meats, except through the local abattoir, but for the operation of peddler cars by the packers. The peddler car is a refrigerator car loaded by the packer at his packing house with less-than-carload consignments placed in the car in station order, i. e., in the order in which the towns for which the consignments are intended will be reached, so that consignments may be unloaded by the crews as the

ized by the individuals who do not hold more than 49 per cent of the stock. We can not accept this apprehension as equivalent to fact.

Complainant introduced in evidence, subject to objections, numerous extracts from reports of the Federal Trade Commission dealing with the activities of the packers, especially with reference to the handling by them of articles other than fresh meat and packing-house products. We do not deem it necessary to comment on these data. The extent of the dealings of the packers in these other commodities is not for us to condemn or approve. We are to consider the connection of the packers with these commodities from a transportation standpoint.

A typical exhibit of record shows articles customarily shipped by one packer in peddler cars as follows: Meats—smoked, fresh, dry salted, cooked, and pickled; lard, lard substitutes; oils—cooking, salad, and animal; tallow, oleomargarine, bouillon cubes, in tin and glass; beef extracts, in jars and pails; eggs, poultry, butter, cheese, soap and soap powder, soda, glycerin; fish—salted, pickled, and smoked; canned goods—fish, meats, soups, fruits, vegetables, milk, butter; catsup, mustard, pickles, salad dressing, olives, and peanut butter, in glass. Later herein the relative proportions of these articles will be analyzed. All of these commodities are classified as packing-house products except soup, oleomargarine, Libby goods, fish, and produce. The term "Libby goods" covers canned goods, vegetables, and fish, canned for and sold by Swift & Company, and the articles shipped in glass.

In general practice not more than one peddler car per week is operated by a packer over a particular route. The car is precooled before loading, and is re-iced in transit at the expense of the packer. Less-than-carload rates are paid by the packer upon each included consignment to its destination, subject to certain minimum charges as to the car, which will be referred to later.

If the peddler car contains freight for points upon the first railroad freight division out of the station at which it is loaded, it moves to the various points upon such division in the local way-freight train. If it contains consignments for both the first and second divisions out of the city where it is loaded, the peddler car will ordinarily move over the first division during the day after shipment, and the operation will be repeated upon the next division during the following day, Sundays excepted.

Peddler cars are frequently loaded for territories far distant from the packing plant, and move in through service from the loading point to the division point beyond which the goods in the car are to be distributed, or to a break-bulk point. A similar service is accorded to wholesale grocers, who use what are known as the overhead merchandise cars. In these instances, however, there are

grocery jobbing houses much nearer to the ultimate destinations than is the packing plant, and the wholesale grocer who would normally serve the territory so reached by the peddler car can deliver his goods in less time than can the packer, who starts from the more distant packing house.

Packers' shipments in peddler cars, when destined to points on branch lines over which such cars do not run, are taken out of the peddler cars at the junction point, and thence are handled to destination in box cars in local freight service.

The less-than-carload shipments made by the wholesale grocers are loaded into the cars by the carriers' employees. The wholesale grocer pays no minimum charge for the use of a car, and pays only the less-than-carload rate upon the weight of the goods transported. If the goods are shipped in a refrigerator car no additional charge is made for the icing. The carriers' merchandise way-freight cars are handled in the same trains as the packers' peddler cars, but the peddler cars, because loaded in station order, avoid many delays encountered by the merchandise car. Complainant concedes that if a merchandise car and a peddler car start out and move in the same train there would be no preference in movement. It contends, however, that if the merchandise car contained a large shipment for one station the car would probably be set out at that station for unloading by the station force, and would not be picked up until the arrival of the next local train, while the peddler car would not be set out under such conditions.

Wholesale grocers in Chicago frequently load their merchandise shipments in trap cars at the respective plants, but the goods are not arranged in station order so as to avoid rehandling by the railroad, and do not go intact to points out of Chicago for rehandling. The goods are usually taken to the freight stations and are there reworked and are then forwarded in merchandise cars. Certain wholesale grocers in Chicago use the tunnel in transporting their shipments to the different freight stations to be reworked.

The method of handling the grocer's shipment is the principal cause of delay. The grocers insist that the use of station-order cars would not remedy their grievance, since (1) the grocer could not make up the necessary minimum, as the packer can, through the use of fresh meats and packing-house products; (2) nonperishable freight, moving in an ordinary freight car, would not receive the special and expedited service given the packer in his refrigerator car; and (3) the grocer's car would not be moved on any particular schedule, and he would have no means of forecasting the time of arrival of the goods, while the packer's goods would be handled approximately on a schedule.

The packers supervise the car loading so as to assemble all consignments in station order. The grocers contend that this is impossible where cars are loaded at freight stations, as the freight is placed in the cars as received, so that often packages are not found until the car reaches the terminal, and must be back-hauled to destination. They assert that frequently merchandise cars are held over for a day awaiting the assembling of sufficient freight to justify their movement.

The packers assume the cost of loading at point of origin, the cost of re-icing, the sum necessary to meet the minimum charge, and the expense due to ownership of the car. These four items of expense, aggregating from 33 to 36 cents per 100 pounds in addition to freight rates, are not paid by the grocers upon shipments of less-than-carload traffic.

By voluminous exhibits on behalf of Swift & Company the packers' peddler-car service is compared with less-than-carload merchandise service other than refrigerator, and the less-than-carload merchandise refrigerator-car service available to the wholesale grocers from Chicago and East St. Louis, Ill., St. Paul, Minn., Kansas City, Kans., Fort Worth, Tex., South Omaha, Nebr., Milwaukee, Wis., St. Louis and St. Joseph, Mo., Cleveland, Ohio, Denver, Colo., Moultrie, Ga., Andalusia, Ala., Sioux City, Iowa, and Portland, Oreg. As to each peddler-car route the exhibits show the day and hour on which the car is taken from the packing plant and the day and hour at which the car is scheduled to reach each of the destinations for which it contains freight. Paralleling the schedule for the peddler car is placed the schedule offered by the carrier for less-than-carload merchandise service from the point of origin of the peddler car to destination; and likewise any less-than-carload merchandise refrigerator-car schedules of the carriers from the same points of origin to the destinations reached by the peddler cars. These exhibits indicate that 10,632 cities and towns are served by the peddler cars operating out of the 15 cities mentioned. To 5,273 of these places, substantially one-half of the number, the carriers' merchandise box-car schedule is the same as the peddler-car schedule. The number of places to which the carriers' box-car merchandise schedule is more expeditious than the peddler-car schedule is 2,614. The peddler-car schedule is more expeditious than the merchandise-car schedule to 2,745 places.

The peddler cars, as heretofore stated, are usually forwarded about once a week, while the merchandise cars with which comparison is made are usually scheduled to move from points of origin daily except Sunday. Taking this fact into consideration these exhibits

show that to 5,292 places the merchandise service is more frequent by five days per week than the peddler-car service; and likewise that the merchandise schedule is more frequent than the peddler-car schedule per week, to 2,886 places by four days, to 519 places by three days, to 1,247 places by two days, and to 698 places by one day. In other words, to every place served by the peddler car the merchandise service is more frequent than the peddler-car service by at least one day per week; to more than half the places served by the peddler car the merchandise service is more frequent by five days per week, and to more than three-fourths of the places served by the peddler car the merchandise schedule is more frequent by at least four days per week.

A somewhat similar exhibit submitted on behalf of Armour & Company is to the effect that the total number of points served by the Armour peddler cars is 4,419. Their peddler cars serve 5.39 per cent of the cities, towns, and villages of the United States which are reached by railroads. Of the points reached by them 75 have a daily less-than-carload refrigerator-car service; 402 have a similar service once a week, 447 twice a week, 229 three days a week, 1 four days a week, and 16 have five times a week. Thus, 1,170 towns have at least weekly service through the carriers' scheduled less-than-carload refrigerator service. Of the points reached by the Armour peddler cars, 3,667 have a daily merchandise service, 8 points one day a week, 23 towns two days a week, 718 three days a week, and 3 towns four days a week.

As the complainant points out, the merchandise car available to the wholesale grocer is also available to the packer, but the packer's peddler car and the refrigerator car, in which his traffic is transported, are not available to the wholesale grocer. In weighing these showings we must bear in mind that the train schedules upon which the exhibits are based make no allowance for delays at point of origin, in transit, or at destination. Certain of the packers' peddler cars, as above indicated, move several hundred miles upon a weekly schedule. The wholesale grocer, on the other hand, ships to points within a radius of only 100 miles in a daily merchandise car. If the time occupied in movement from the point of production or distribution to the point of consumption is controlling, it would seem that as to the greater part of his business the grocer has an advantage.

Armour & Company also undertakes to compare the service given less-than-carload shipments from its plants handled through carrier's freight houses with that given such shipments in peddler cars. It presents the results of observations made of less-than-carload shipments taken to the freight depots by truck or trap car for the



week ended November 8, 1919. The service given is measured in blocks of 50 miles to determine the time in transit for a graduated distance of 350 miles and over from points of shipment. Summarized, the exhibit shows:

	Total ship- ments.	Total days.	Total mileage.	Average days.	Average distance.
Local service.....	1,200	2,250	Miles. 152,378	1.88	Miles. 152
Peddler-car service.....	1,371	3,745	354,351	2.73	254

Whether the shipments moved in refrigerator or merchandise cars is not shown. These computations indicate an average daily mileage per shipment of approximately 81 miles in the local car service and 55 miles in the peddler car.

Exhibits have been received of record on behalf of the defendants in central, western trunk line, and southern territories which detail the peddler-car service available in those territories and make comparison with the merchandise service available to the wholesale grocer. Upon the routes over which the peddler cars operate there are numerous stations to which merchandise cars are loaded solid. The merchandise cars frequently contain freight for points intermediate or beyond the station to which such cars are destined. In these instances the shipments are handled from the break-bulk point to destination in the local way-freight merchandise trains. Wholesale grocers are located at different points through and to which the peddler cars operate. Thus, in southern territory wholesale grocers are located short distances apart, and generally have a daily merchandise service to points within their normal trade territory. On the Louisville & Nashville, for example, the peddler cars, with few exceptions, operate over a distance greater than the grocer's normal trade territory. In fact, the break-bulk point of the peddler car is usually beyond that territory of the grocer located at the point of origin of the peddler route. The peddler car does not in all instances operate to the final destination for which the car contains freight. The schedules provide in numerous instances for peddler-car service only to given intermediate points, beyond which it is necessary to handle the traffic in ordinary box cars.

Voluminous exhibits have been introduced by complainant, intended to show that grocers' shipments encounter much greater delays than do shipments in the packers' peddler cars, and that greater expedition is accorded to the peddler cars than to the merchandise cars available to the grocers. Without stating in detail the results of analysis of these exhibits, they indicate that a majority of the shipments made by the packers in peddler cars consume less days in

transit and are moved a greater number of miles per day than the majority of shipments in the merchandise cars. These comparisons are subject to the infirmity that they contrast the actual performance for the grocers' shipments with scheduled performance for the packers' shipments. The records of actual performance of the packers' shipments, however, were not available to the grocers in compiling their exhibits. Many of the exhibits do not compare shipments between the same points. Nevertheless, the manner of loading the peddler car in station order makes it practically certain that in many instances shipments in such car will arrive at destination sooner than shipments loaded in the merchandise car, which often must be reworked in transit. The record is clear that in emergencies shipments in refrigerator cars are handled more expeditiously than are those in the ordinary merchandise cars. Commodities ordinarily handled in refrigerator cars are more susceptible to damage than the commodities usually loaded in merchandise cars, and expeditious handling of perishable commodities is necessary to avoid loss-and-damage claims. On the other hand, a merchandise car routed straight through to one destination would often be in transit less time than a peddler car in reaching the same destination, but peddling en route. As illustrative, we may compare the operation of a peddler car of Swift & Company moving out of Chicago over the Pittsburgh, Fort Wayne & Chicago Railroad with the daily merchandise service available to the Chicago wholesale grocer.

	Peddler car.	Solid merchandise cars.
Leave Chicago.....	12 m. Monday.....	10.30 p.m. Monday
At Valparaiso, Ind.....	7 a. m. Tuesday.....	7 a. m. Tuesday.
At Plymouth, Ind.....	9.40 p. m. Tuesday.....	Do.
At Warsaw, Ind.....	12 m. Wednesday.....	Do.
At Columbia City, Ind.....	2 p. m. Wednesday.....	Do.

The solid merchandise cars are scheduled to arrive at the various destinations prior to 7 a. m. Tuesday, and are ready to be unloaded for delivery to the consignees at the various destinations at that hour.

The wholesale grocers submit a comprehensive analysis of the time in transit of their shipments moving out of various points of origin, such as Chicago, Kansas City, St. Louis, Oklahoma City, Okla., and Fort Worth during the week ended May 24, 1919. The time of arrival at the several destinations of these shipments was supplied by the carriers. A comparison of the actual time in transit with that carried in the train schedules, as introduced by the packers, shows the following:

From—	Shipments.	Delayed one day or more.	From—	Shipments.	Delayed one day or more.
Chicago.....	1,559	<i>Per cent.</i> 73	Fort Worth.....	68	<i>Per cent.</i> 85.29
St. Louis.....	576	81.42	Kansas City.....	607	68.87

Complainant asserts that more than 7,000 cities and towns in the United States are served by regular scheduled peddler cars of the packers which do not receive similar service in the carriers' refrigerator cars available to wholesale grocers or other distributors of perishable commodities. It is contended, therefore, that as to these 7,000 cities and towns the wholesale grocer is unable to compete on an equality with the packers in the distribution of food products. Defendants and the packers concede that many cities and towns do not receive scheduled refrigerator-car service. Defendants express their willingness to inaugurate such service whenever warranted by the tonnage offered. Complainant replies, quite generally, that if the packers were required to load their eggs, butter, cheese, and other perishable products in public refrigerator cars, this tonnage, added to that which the grocers might have, would be of sufficient volume to warrant the carriers in maintaining refrigerator-car service to these points. We are not convinced that such is the fact. Particular instances of inadequate refrigerator-car service are not now before us.

The record indicates that the wholesale grocer handles a comparatively small quantity of perishable freight. The following statement shows shipments made by certain large wholesale grocers for the week ended May 24, 1919, as compiled by the packers from statements of shipments furnished by complainant:

Wholesale grocer.	Location.	Total weight of nonperishables.	Perishable shipments.			
			Commodity.	Number.	Total weight.	Average weight.
		<i>Pounds.</i>			<i>Pounds.</i>	<i>Pounds.</i>
Reid Murdock Co.....	Chicago, Ill.....	1,728,173	Cheese.....	491	51,602	105
Do.....	Hammond, Ind....	56,332	Lard, etc. <sup>1</sup> ...	21	1,968	98
Steel Wedeler & Co.....	Chicago, Ill.....	491,721	Cheese.....	27	1,208	45
Sprague, Warner & Co....	do.....	1,786,486	Lard, etc. <sup>1</sup> ...	5	540	108
Soudders-Gale Grocery Co.	St. Louis, Mo.....	408,861	Cheese.....	260	16,296	63
Ridenour-Baker Grocery Co.	Kansas City, Mo..	1,170,406	Lard, etc. <sup>1</sup> ...	29	4,022	138
Jett & Wood.....	Wichita, Kans....	268,893	Cheese.....	8	175	22
			Lard, etc. <sup>1</sup> ...	6	362	60
			Cheese.....	161	9,538	59
			Lard, etc. <sup>1</sup> ...	52	8,741	165
			Cheese.....	18	492	27
			Lard, etc. <sup>1</sup> ...	54	10,441	206

<sup>1</sup> Lard, lard compounds, and lard substitutes.

The nonperishable items constituted 98.2 per cent of the total weight, and perishable shipments 1.8 per cent, of which 1.28 per cent

was cheese and 0.52 per cent consisted of lard, lard substitutes, and lard compounds.

If the tonnage of the grocer and the packer in the articles under consideration should be so combined as to eventuate in the establishment of refrigerator-car service paralleling the established peddler-car service, under existing circumstances it would result in waste of transportation, with its attendant increased expense. There is no claim of discrimination in transportation service between the packers' peddler car or branch-house car and the public refrigerator car. If the perishable articles should be eliminated from the packers' cars and placed in the public refrigerator cars where such cars may be run, it would either force the packers to pay additional freight charges as penalties for light loading, or else would transfer the burden to the carriers if the minimum charges were reduced to meet the reduced tonnage.

An exhibit on behalf of Morris & Company shows the consist of 45 peddler cars operated out of Chicago between March 1 and March 6, 1920, inclusive. Fresh meats and packing-house products constituted 67.75 and 21.40 per cent, respectively, of the total contents of all the cars. A similar exhibit showing the consist of 62 cars operated by Morris & Company out of Oklahoma City for the same period shows that fresh meats and packing-house products constituted 55.10 and 31.51 per cent, respectively, of the total contents of all the cars.

A similar exhibit shows the contents of peddler cars shipped by Swift & Company out of Chicago during the week ended May 24, 1919. The shipments aggregated 1,744,436 pounds, of which 506,124 pounds, or 29 per cent, are shown as weight of the grocery items. If lard substitutes, oleomargarine, and soap should be eliminated from the grocery items, it would reduce the percentage of grocery items in such cars to 9.8 per cent.

An exhibit on behalf of Armour & Company shows the total tonnage and the percentage of the various commodities contained in peddler cars shipped by that company during the week ended November 15, 1919, as follows; this exhibit also shows the consist of mixed carloads consigned to branch houses, as follows:

	Peddler cars.		Mixed carloads.	
	Weight.	Percent.	Weight.	Percent.
	<i>Pounds.</i>		<i>Pounds.</i>	
Fresh meats.....	8,470,252	43.12	21,068,147	66.75
Packing-house products.....	2,684,843	33.36	9,157,815	29.06
Lard substitutes and lard compounds.....	909,760	11.3	700,125	2.23
Butterine.....	76,484	.95	121,539	.30
Dairy products.....	319,214	3.97	143,982	.45
Grocery items.....	557,085	7.29	343,643	1.09
Branch-house supplies.....	446	.01	13,122	.04
Total.....	8,048,084	100	31,548,674	100

Analysis of the commodities loaded in 59 peddler cars shipped by Armour & Company from Chicago during the week ended May 24, 1919, shows the following:

Commodity.	Weight.	Commodity.	Weight.
Products manufactured, prepared, and shipped:	<i>Pounds.</i>	Products purchased from others and shipped:	<i>Pounds.</i>
Fresh meats.....	419,737	Canned vegetables.....	31,762
Packing-house products.....	284,661	Cereals.....	17,158
Oleomargarine.....	25,889	Coffee.....	7,846
Soap and soap powders.....	16,440	Canned fish.....	8,084
Mince-meat.....	144	Rice.....	9,828
Grape juice.....	651	Molasses.....	130
Pork and beans.....	2,389	Flour (buckwheat).....	216
Soda-fountain supplies.....	21,857	Pickles.....	180
Glycerin.....	122		
Beech-nut butter.....	2,428	Total.....	74,874
Advertising matter.....	250		
Eggs.....	1,686	Total weight in cars, 8.36 per cent.	
Canned milk.....	5,670	Average weight per car, 1,270 pounds.	
Butter.....	722		
Cheese.....	21,102		
Dried beans.....	13,863		
Table sauces.....	8,431		
Total.....	821,040		
Total weight in cars, 91.64 per cent.			
Average weight per car, 13,916 pounds.			

#### TARIFF RULES GOVERNING PEDDLER AND MERCHANDISE CARS.

In central territory the car movement of less-than-carload freight may be accomplished (1) under rule 10 of the consolidated classification, (2) by stopping in transit to unload partially, or to complete loading, (3) by use of peddler cars, or (4) under rules governing mixed carloads of fresh meats and packing-house products, and other mixtures.

Rule 10 of the consolidated classification has been in force in substantially its present form since April 1, 1887. In effect it provides that articles having a carload rate or rating may be shipped in mixed carloads from one consignor to one consignee and destination at the carload rate applicable to the highest classed or rated article, and subject to the highest minimum weight attaching to any article in the carload.

The first peddler-car tariff in eastern territory became effective in 1903. In central territory the rules generally provide that on all consignments loaded in the car the shipper shall pay the less-than-carload rates to the respective destinations. There is a minimum aggregate charge per car equivalent to the dressed-beef carload rate upon a minimum weight of 20,000 pounds to the most distant destination of any consignment in the car. All commodities in the car are considered in making up the minimum. The tariff is intended to permit delivery from the car as the trains stop at each station and while the car is in the train. If the car is taken out of the train

for the convenience of the shipper or consignee a charge of \$5 per car is made for each stop. In this report we can state only the general practice: there are exceptions in the tariffs of certain lines as to both the minimum charge and the charge for stoppage in transit. In *Peddler Car Minimum*, 43 I. C. C., 139, we found that the respondents had not justified a proposed increase in the minimum weight from 20,000 to 21,000 pounds in arriving at the minimum charge for a peddler car. The minimum on carload shipments of fresh meat, including dressed beef, at that time was 21,000 pounds. The increase to this latter minimum from 20,000 pounds was found justified in *Fresh Meat and Packing-House Product Rates*, 38 I. C. C., 665, 668.

From Cleveland, Buffalo, N. Y., and Pittsburgh, Pa., the minimum charge is based on 12,000 pounds at the third-class rate from origin to final destination; in addition, less-than-carload rates must be paid on any articles included, other than fresh meats and packing-house products, and such additional commodities are not considered in making up the minimum. This rule was established in conformity with our findings in *Cleveland Provision Co. v. B. & O. R. R. Co.*, 50 I. C. C., 612. In that case we said, page 618:

Defendants are apprehensive that any reduction in the minimum charge as applied from Cleveland will be demanded by and accorded the large packers at Chicago, with the result that their peddler cars will in many cases be shipped without the by-products. In that event substantially the same service might be performed at much less than the present charge. Of course, revenue in addition to the peddler-car revenue would be derived from the separate shipment of the by-products, but the lessened efficiency of such a peddler car from a strictly transportation standpoint would remain.

\* \* \* There can be no question but that the peddler car with a light loading tends to inefficiency in the transportation system.

In eastern trunk line territory the general rule is that fresh meats and packing-house products may be shipped in packers' peddler cars, subject to a minimum charge made by application of the first-class rate to the most distant point for which the car contains freight and a minimum weight of 8,000 pounds. Commodities other than fresh meat and packing-house products may be loaded in the same car and transported at the less-than-carload rates, but the weight of such commodities can not be used to make up the minimum.

In western trunk line territory the rule provides that peddler cars will be subject to a minimum weight of 10,000 pounds, to be made up of fresh meats, packing-house products, butterine, dressed poultry, mincemeat, neat's-foot oil, lard oil, and tallow oil. If a weight of 10,000 pounds of such articles is not loaded in the car, the deficit is charged for at the fourth-class rate to the first station for which the car contains a shipment. The total charges on the articles men-

tioned must not be less than on 10,000 pounds at the fourth-class rate from point of shipment to final destination of the car. All articles loaded in the car, other than those named in this rule, pay the less-than-carload rate to the destination of the individual consignment, and the charges on such articles are not used in computing the minimum charge for the peddler car.

In *Rules Governing Shipments of Freight in Peddler Cars*, 32 I. C. C., 428, we found that the respondents had not justified certain proposed changes in their peddler-car rules for application within western trunk line territory. It was proposed to amend the then existing rule by increasing the minimum from 10,000 to 12,000 pounds, and, by adding the words "and other freight" to the list of named commodities, to enable shippers to make up the minimum weight by including commodities other than those specified.

In southwestern territory the tariffs generally provide that shipments of fresh meat, packing-house products, and other articles may be transported in peddler cars, subject to a minimum charge for 10,000 pounds at the less-than-carload fresh-meat rate to the final destination of the car. The charges on articles other than fresh meat and packing-house products shipped in the same car may be used to make up the minimum charge. This rule is not universally applicable in the southwest, as certain lines publish a slightly different rule, similar to that in western trunk line territory.

The only substantial difference between the peddler-car rules effective in the southwestern territory and those in western trunk line territory is that in the former articles other than fresh meat or packing-house products may be used in making up the minimum. This rule was established in alleged conformity with the findings in our supplemental report in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C. 656-671. In that proceeding we found that carriers in southwestern territory should forthwith publish tariffs according peddler-car service; that the rate upon packing-house products should be 130 per cent and upon fresh meats 150 per cent of the carload rate, and that a minimum might be required equivalent to the earnings upon 10,000 pounds of fresh meat to the most distant point.

In our original report in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 166, we prescribed a mileage scale of rates on fresh meats and packing-house products, in carloads, for application within this same territory. We did not define the articles that should be included under the term packing-house products. The packers were not then engaged in handling grocery items to any extent which reflected itself by any reference to such traffic in the case cited. The scale of rates established by the carriers applies on many articles classed as packing-house products, which are also handled by

the wholesale grocer, such as lard substitutes, cottonseed cooking oil, peanut cooking oil, corn cooking oil, soya-bean cooking oil, canned meats, canned soups, chicken tamale, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients. Peanut cooking oil, corn cooking oil, and soya-bean cooking oil are not included under the term packing-house products in the perishable freight tariff. When these articles are shipped by the wholesale grocer in the carriers' merchandise cars they are subject to the class rates. We can see no logical reason for different rates on these commodities when shipped in merchandise and in packers' peddler cars.

In *Rates and Rules on Shipments of Packing-House Products*, 36 I. C. C., 62, we disapproved proposed changes in the rules governing shipments of packing-house products, fresh meats, and other articles transported in peddler cars in southwestern territory, and required the continued maintenance of the rates and rules found reasonable in our supplemental report in *Investigation of Alleged Unreasonable Rates on Meats, supra*. In answer to the contention by respondents that the mileage scale in southwestern territory was an exception to the basis in effect throughout the country, and that its maintenance was a discrimination against shippers of other classes of local freight who were required to pay class rates on commodities and ship in ordinary merchandise cars, we said, page 69:

The circumstances and conditions surrounding the shipment of packing-house products and fresh meats in peddler cars, and of other freight in ordinary merchandise cars, are so radically different, and the rules, regulations, and requirements applicable thereto so dissimilar, that no decisive weight can be given to the contention that the maintenance of the mileage scale is an unjust discrimination against shippers who use the latter service.

The same contentions are made in this case both by defendants and complainant. The packers vigorously oppose its cancellation.

The peddler-car rule generally applicable in southern territory provides for a minimum weight of 10,000 pounds. When the weight is less than 10,000 pounds, the deficit in weight is charged for on basis of less-than-carload rates on fresh meats to the first destination for which the car contains freight. The peddler-car arrangements operative in southern territory are not based to any extent upon any definition of the term "packing-house products," nor are such arrangements dependent to any extent on any list of articles published under that heading.

Perishable protective tariff No. 1, agent Fairbanks' I. C. C. No. 6, reflects an effort on the part of the Director General of Railroads to unify the rules, regulations, and charges applicable to the protection of perishable freight throughout the country and to secure adequate compensation for such services. Rule 630, set out as an appendix to this report, provides conditions under which refrigerator



cars will be furnished for the transportation of perishable articles from one consignor at one point of origin to one consignee at one destination. This rule was considered by us in *Perishable Freight Investigation*, 56 I. C. C., 449, 609-610. We there pointed out that certain objections to the propriety of the rule were based on the difference in the regulations and charges as compared with those applicable to "meat peddler cars" as provided in rule 625, and saved the subject matter of the objections so that it might be dealt with in the instant case upon a more complete record. Inasmuch as the provisions of the rule were substantially in accord with those then in effect, we permitted it to be incorporated in the tariff with certain minor modifications, without prejudice to any finding that might be made in the present proceeding. Those modifications were made, and the rule is now incorporated in the schedule filed with us.

Concededly the rule in question is seldom used by the grocers, because they have not sufficient perishable traffic to warrant the use of a refrigerator car under the conditions imposed by the rule. Complainant contends, however, that it is an unjust discrimination for defendants to permit only perishable goods to be shipped in such cars while nonperishable goods are allowed in packers' peddler cars, and to base the charges upon perishable goods only while the carriers count nonperishable items against the minimum in central territory, southwestern territory, and in southern territory. They protest as unjustly discriminatory the limitation of the use of the refrigerator car to freight for one consignee so long as the packer's car is permitted to carry freight for any number of consignees at any number of destinations. Objection is also made to the limitation of the rule in official and southern classification territories to shipments of butter, cheese, eggs, dressed poultry, and game, and because the rule provides that the deficit shall be charged for at the rate applicable to the highest rated article in the car.

In *Minimum Weight on Fresh Meats and Other Commodities*, 30 I. C. C., 349, we found that the respondent, Illinois Central Railroad, had justified an increase in the minimum weight from 10,000 to 15,000 pounds for shipments in special refrigerator cars from Chicago to southern territory, provided the element of discrimination was eliminated by a similar increase in the minimum weight for the same service from St. Louis. The minimum from St. Louis was so increased. In that case respondent showed that little traffic, if any, moved under the minimum of 10,000 pounds from St. Louis, and that it was immaterial as a practical matter whether the minimum was 10,000 or 15,000 pounds. The evidence in the instant case shows that the grocer does not ordinarily have sufficient tonnage of perishable

commodities to one destination to warrant the use of a refrigerator car under either minimum.

The Louisville & Nashville offers a general refrigerator-car service for less-than-carload shipments of perishable freight, subject to the following rule, published in exceptions to the southern classification:

Refrigerator cars will only be furnished for less-than-carloads of perishable freight when such shipments aggregate not less than 10,000 pounds, in any one car, or when charges are paid on basis of minimum weight of 10,000 pounds.

Refrigerator cars will not be furnished for through classes of freight except for carriers' convenience.

Except for the last paragraph quoted, the rule is the same in principle as the minimum weight on peddler cars. The rule does not restrict shipments to one destination. In actual practice little, if any, use is made of this service.

Western trunk line tariff agent Boyd, I. C. C. No. A-1020, provides that carriers will furnish refrigerator cars for loading of freight to be transported at less-than-carload rates, subject to a minimum charge at the fourth-class rate, minimum 15,000 pounds, to the final destination of the car. It does not limit the car to one destination, nor does it prohibit placing nonperishable freight in the car. The substantial difference between this rule and the rule applicable to the peddler car is that the grocer must pay a minimum charge based on the fourth-class rate on 15,000 pounds to final destination and the carrier assumes the cost of icing, while the packer pays a minimum charge based on the fourth-class rate on 10,000 pounds to final destination of the peddler car, and bears the icing charge. The grocers do not take advantage of this rule because it is impracticable for them to load from their warehouses without rearranging their business.

For the first six months of 1919 Swift & Company paid \$63,175 to cover the difference between the minimum weight or charge required on peddler cars and the actual amount of freight charges accruing on the freight loaded therein at the less-than-carload rate, which was permitted to apply against the minimum charge or weight. This charge, referred to as a penalty charge, amounted to 2.44 cents per 100 pounds of freight contained in these cars. For the year 1918 the aggregate peddler-car shipments of Swift & Company from Chicago, Kansas City, South Omaha, East St. Louis, South St. Joseph, South St. Paul, Minn., North Fort Worth, Tex., and Denver plants were comprised of commodities in proportions as follows:

	Per cent.		Per cent.
Fresh meats-----	37.84	Libby goods-----	5.80
Packing-house products-----	41.21	Fish-----	.46
Soap-----	7.04	Produce other than cheese-----	2.46
Oleomargarine-----	8.12	Cheese-----	2.07

The penalty charges paid by Morris & Company during the first six months of 1919 on its peddler cars were as follows:

From—	Number of shipments.	Shipments bearing penalty charges.	Total amount of penalties.	Average penalty per car.
South Omaha.....	396	95	\$307.93	\$0.29
East St. Louis.....	1,622	389	2,999.12	7.71
Kansas City.....	671	96	714.48	7.44
Oklahoma City.....	1,235	451	9,650.47	14.78

The penalties paid on the cars operated out of Chicago aggregated \$315.62, and under the complainant's proposal these penalties would have been increased by \$213.24.

For the period August 1, 1918, to July 31, 1919, Armour & Company paid penalty charges of \$36,896.20, of which amount \$18,794.18 accrued on branch-house cars and \$18,102.02 on peddler cars.

The packers now load in the peddler cars all the tonnage for which they have orders. It is claimed that if the proposal of complainant is approved, and the so-called unrelated items are eliminated from the cars, it will mean increased penalty charges with decreased utilization of equipment, unless the minimum charge now applicable on such cars is reduced, with resulting loss of revenue to the carriers.

Wilson & Company analyzes the contents of 16 peddler cars shipped from Albert Lea, Minn., Chicago, Kansas City, and Oklahoma City. Its exhibit shows the peddler-car rules which govern, the car number, point of origin, date of shipment, routing, opening and closing points of the peddler car, and the result that would obtain if the proposal of the complainant as to elimination of unrelated items from the car were granted. Summarized, this exhibit shows:

Point of origin.	Actual weight in car.	Penalty.		Under complainant's proposal. Increase in penalty.			
		Weight.	Charges.	Weight eliminated.	Weight.	Charges.	Increased transportation cost.
	<i>Pounds.</i>	<i>Pounds.</i>		<i>Per cent.</i>	<i>Pounds.</i>		
Albert Lea.....	8,407	2,496	\$3.68	15	400	\$0.60	\$4.46
Do.....	12,493			33.1	1,689	2.45	7.05
Chicago.....	12,467	4	2.37	82.5		15.16	24.60
Do.....	11,529			11.4			6.80
Do.....	12,702	138	.48	30.2	999	3.50	9.63
Do.....	8,453	2,080	3.12	11.6	451	.68	1.18
Do.....	11,908			25.8	2,418	6.05	2.01
Do.....	14,741			23.1			2.61
Do.....	5,162			9.9	32	.13	2.14
Do.....	11,094	6,269	8.16	26		16.06	18.61
Do.....	14,531		2.44	31.3		17.33	20.36
Do.....	14,395		1.17	45.3		13.65	17.51
Kansas City.....	16,174			31.3			6.43
Do.....	23,045			18.1			9.99
Oklahoma City.....	11,684			22	901	2.79	8.30
Do.....	23,383			16.6			9.42
Total.....	212,075	9,943	21.42		6,860	79.01	151.91

The average reduction in revenue per car under complainant's proposal is \$8.14.

#### CARLOAD MIXTURE RULES.

We have also to deal with the contention of the complainant that under the provisions for carload mixtures of fresh meats and packing-house products at carload rates, which include certain articles not the products of slaughtered animals, handled competitively by the wholesale grocers, the packers are enabled to secure better rates than the grocer on small consignments of the same articles between the same points. This disability arises from the fact that the grocer does not have the fresh meats and packing-house products to make up the minimum.

The rules applicable on fresh meats and packing-house products in mixed carloads vary in the different classification territories. In central territory the mixing rules (1) provide for the mixing of products of packing houses, not including fresh meats, the aggregate weight being 30,000 pounds or more at the carload rate applicable on each article in the car; if the aggregate weight does not exceed 30,000 pounds, sufficient weight at current fifth-class rate shall be added to make up the deficiency, any other article loaded in the car, not specifically mentioned in the rule, to be charged at less-than-carload rates; (2) permit a mixture of products of packing houses, not including fresh meats, with any articles rated fifth class in carloads in current official classification or exceptions thereto, the aggregate weight being 30,000 pounds, or more at the carload rate applicable to each article in the mixture; any other articles loaded in the car not specifically mentioned in the rule to be charged at less-than-carload rates. Any deficiency in the revenue on a shipment being made up on the fifth-class basis unless there are bulk meats in the car, in which event the deficiency is made up on the fourth-class basis; and (3) provides for a mixture of products of packing houses, including fresh meats, with any articles taking fifth class in carloads in official classification or exceptions thereto, at the carload rate applicable to each article in the mixture, subject to a minimum of 30,000 pounds on the fresh meats. The entire shipment is subject to a minimum charge on basis of the dressed-meat rate and minimum weight of 21,000 pounds, any articles not specifically mentioned in the rule to be charged at the less-than-carload rates.

The rule in southern territory provides that cars containing fresh meats and packing-house products will be transported at their respective carload rates, subject to a minimum charge of 21,000 pounds at the fresh-meat carload rate from point of origin to destination. Butter, oleomargarine, and dressed poultry may be shipped in such cars and the revenue accruing thereon applied against the prescribed minimum. If cheese, eggs, soap, canned fruits, vegetables, or milk

are loaded in such cars the less-than-carload rate must be applied thereon, and the revenue accruing on such articles can not be applied to make up the revenue required for the movement of the car.

In western territory the mixing rule as applied to the movement of fresh meats, packing-house products, and kindred articles, permits fresh meats and packing-house products to be transported in mixed carloads at their respective carload rates, subject to a minimum weight of 24,000 pounds, with a further minimum charge of 20,000 pounds at the fresh-meat carload rate, any deficiency between actual and minimum weight of 24,000 pounds to be charged for at lower rate. Only fresh meats and articles listed under the head of packing-house products in the tariff may be so transported, and the weight of such articles applied against the prescribed minimum weight for the handling of the mixed carloads. If any articles other than fresh meats and packing-house products are loaded in such cars they must pay the less-than-carload rates, and the weight of such articles can not be applied against the minimum prescribed.

The question of the proper mixture for fresh meats and packing-house products has been before us in several cases. Thus, *In the Matter of Private Cars*, 50 I. C. C., 652, 707, we said:

The rules governing mixtures of shipments and follow lots now in effect in different sections of the country are not uniform. These rules should not be different when the traffic is transported in privately owned than in railroad-owned cars. Considerable testimony in this regard is devoted to a discussion of the mixing rules in official classification territory applicable to shipments of the meat packers. Practically all shipments by the packers are made in their own cars or in those of their subsidiaries. Because of this the rules specially applicable to them were made an issue in this proceeding.

In addition to rule 10 in the official classification, which is the general mixing rule, carriers in the territory governed thereby have, by exceptions to the classification, published three separate rules applicable to articles shipped by the packers. Under these rules different combinations may be made of fresh meat and packing-house products, or of packing-house products, so that different rates per car or per article may be paid for the transportation. It is perfectly clear that the maintenance of so many rules applicable to shipments from one source complicates the billing and renders it a matter of no little difficulty to determine the charges to be applied to the different articles in each mixture. It is not plainly established of record whether the mixing rules in this territory operate to discriminate unduly against any particular shipper or shippers or any particular description of traffic. It was suggested on the record that such discrimination is possible under the rules.

Mixing rules in the other classification territories are different in many material respects from those in official classification territory as applicable to the same articles. The same thing is to be said with respect to follow-lot rules. It is not necessary, however, to consider these rules further in this proceeding, or to suggest what action should be taken with respect to them, for the reason that the matter is now having consideration of a special committee of experts with a view to suggesting and having adopted by carriers rules as to mixed shipments and follow lots, among other things, that shall be clear, direct, and applicable throughout the entire country.

This question was further considered by us in *Consolidated Classification Case*, 54 I. C. C., 1, 40, wherein we said:

The consolidated classification proposes specific mixtures for meats of various kinds, to be applied in all three territories, which for all practical purposes may be said to be based on the provisions of rule 10 of the official classification. In other words, on a mixed carload of meats the carriers would apply the highest rate for any article in the shipment and use the minimum weight attaching to that rate. The highest rated article would be dressed beef, on which the minimum is 21,000 pounds. Excessive loading of meats prevents proper refrigeration and is undesirable, particularly in warm weather.

The official classification provides no carload mixing arrangement for meats and other products and by-products of packing-houses, except as contained in its rule 10, but the southern and western classifications provide specific mixtures which are peculiar to the packing-house traffic. Generally speaking, however, the mixing rules in the existing classifications are seldom used. The arrangements under which the traffic moves in official territory are published as exceptions to the classification. Those in western territory are published in connection with commodity rates. Those used in that part of southern territory lying east of Tennessee and east of a north and south line through Alabama are provided in the southern classification, but for the balance of that territory there are exceptions. So long as the greater part of the country is covered by exceptions and by special provisions in commodity tariffs, the mixing rules proposed in the consolidated classification would affect practically no traffic, except in that portion of southern territory east of the line referred to. But if the exceptions and the special provisions in commodity tariffs are canceled, substantial increases would result.

It is said that a substantial increase in freight charges on meats in mixed carloads would have a tendency to drive more of the traffic to the peddler cars, for the reason that many branch houses of the packers will be unable to accommodate themselves to straight carload shipments of various products. The public is most efficiently supplied from branch houses, which distribute to the surrounding country, generally by motor trucks.

Several of the large packers propose the following rules:

I. Fresh meats, fresh sausage, leaf lard (not rendered), in straight or mixed carloads, 21,000 pounds, at fresh meat carload rate.

II. Boneless chucks, boneless veal, cheek meat, hog hearts, hog necks, shank meat, beef or pork trimmings, hams, shoulders, sides or other hog meats (salted), straight or mixed carloads, minimum 30,000 pounds, at respective carload rates.

III. Cooked, cured, or preserved meats and sausage (with or without vegetable ingredients), lard, lard compounds, or substitutes (in solid form), bladders, casings, grease, hog skins (green, green salted, pickled or smoked), neat's-foot stock, oils (lard, neat's-foot, oleo, and tallow), oleo stock, stearin, tallow, and weasands, in straight or mixed carloads, minimum 30,000 pounds, at their respective carload rates.

IV. Any or all articles specified under Lists II and (or) III will be handled in mixed carloads with any or all articles specified under List I, at their respective carload rates, subject to a minimum of 21,000 pounds, at the fresh meat carload rate on the entire shipment.

V. Any or all articles specified under Lists II and III will be handled in mixed carloads at their respective carload rates, subject to a minimum weight of 30,000 pounds—any deficit in weight to be paid for at the rate applicable on the commodities specified under List II.

In proposing the above rules the packers made it clear that they proposed them, not for general application, but only as classification rules. They contend that the exceptions and the special provisions in commodity tariffs should be continued and should not be changed without a full hearing. The rules suggested by the packers embody some of the principles followed in the mixing arrangements under which a large portion of the traffic now moves and which differ widely in various parts of the country, but represent some concessions on their part.

It seems desirable to provide rules or specific mixtures in the classification that fit the traffic and make unnecessary the publication of exceptions and special arrangements in commodity tariffs. We understand that the rules proposed in the consolidated classification would not materially change the existing situation in that part of the country where they would apply, and we see no reason for withholding our recommendation pending settlement of the entire question in one comprehensive proceeding. Should it develop that the proposed rules materially increase the present charges we suggest that the rules now carried in the southern classification be published in exceptions to the classification until the entire matter of mixing arrangements for meats is gone into.

The packers, except Morris & Company, have proposed substantially the same rules in this case for general application, to supersede existing mixing rules on fresh meats and packing-house products.

The complainant makes two objections to the mixing rules suggested by the packers:

(1) It objects to including lard compounds and lard substitutes in the mixture, because they are not the products of the meat-packing industry and are not the products of slaughtered animals. It is contended that any rule which helps the packer to obtain and dominate control in the handling of these substitutes thereby prevents the development of competition with lard, which is undoubtedly a product of the slaughterhouse. Lard compounds are made of animal and vegetable matter, while substitutes are of purely vegetable origin. To maintain these commodities in good condition, according to the testimony for the packers, the best practice is to keep them well chilled, at temperatures above the freezing point but certainly not above 40° F. They are subject to both chemical and physical changes. If subjected to a higher temperature, either lard or lard substitutes will change texture and become granular and crystalline with fluid oil between the granules or crystals. Witnesses for the complainant testified that refrigerator cars are not necessary for the safe shipment of lard compound, which is shipped to them by manufacturers, other than the packers, in carload quantities in ordinary box cars.

(2) Complainant also objects to including canned meats with vegetable ingredients not having over 20 per cent beef, pork, or mutton ingredients. It is contended that when more than 80 per cent of the commodity is not the product of any animal, consideration must be given to the industries with which the article is more closely related.

We have in several cases disapproved the imposition by carriers of conditions with which only a comparatively few shippers could comply, and the circumstances and conditions disclosed by the record in this case convince us that such a condition would be created by sustaining the packers' contention concerning mixed carloads. If the carload rates were applied on the mixed carloads, including lard compounds, lard substitutes, and canned meats with vegetable ingredients in excess of 80 per cent, the packers would be benefited, but, on the other hand, others who deal only in those articles would be injured. In other words, under the suggested mixing rules, a packer could ship a comparatively small quantity of lard compounds and substitutes, or canned meats with the indicated major proportion of vegetable ingredients, and secure the carload rate thereon. This may be the tendency of any mixing rule, but we are unable to approve a mixing rule which includes commodities which are not confined to the industry, and are so unrelated to the principal commodities, fresh meats and packing-house products, as are those we have mentioned.

No evidence was introduced on behalf of the various dairy-products associations, interveners in these proceedings. In their brief they state that manufacturers selling direct, and distributors of dairy products and groceries, are constantly and directly in competition with the meat packers; that the mixture rules, which apparently were in large measure originally formulated by the packers themselves, operate seriously to prejudice the manufacturer and distributor of dairy products; and ask that we grant the prayer of complainant.

In *Perishable Freight Investigation*, *supra*, page 610, we reserved for consideration in this case certain objections raised by the wholesale grocers to the proposal of the carriers to permit less-than-carload shipments of fresh meats and packing-house products in "meat peddler cars" under the cost-of-ice provisions, while the grocers in shipping packing-house products would be obligated to ship under stated charges. Subsequent to our decision in that case the carriers withdrew their proposal to apply refrigerator charges on less-than-carload shipments handled in refrigerator cars, and all parties agree that such action made it unnecessary for us now to pass upon that question.

#### CONCLUSIONS.

Whether within the meaning of the interstate commerce act the transportation of the unrelated items in the packers' peddler cars unduly prefers the packers and unduly prejudices the complainants, who load or unload their freight from cars on private sidings at their own expense or through the freight houses of the carriers, must  
 62 I. C. C.



depend upon the usual test in cases involving discrimination, namely, whether the conditions of transportation are substantially similar in the two cases. It seems to be admitted by all parties to the record that only under the present method of operation can there be avoided the confusion and congestion that would follow an attempt of the packers to deliver their fresh meats and packing-house products through the carriers' freight houses. No objection is made to the continuation of the present practice in the operation of the peddler cars or branch-house cars in so far as they are limited to transporting fresh meats and packing-house products. The complainants contend merely that the unrelated items should be excluded from those cars and handled through the carriers' freight houses in the same manner as are the shipments of the grocers.

We must look to the substance rather than to the form in determining whether conditions are substantially similar. Under the law a reasonable tender of freight at an accessible point must be made by carriers to consignees. Likewise the carriers must maintain reasonable facilities for the receipt of freight from shippers. Ordinarily delivery by the carrier to the consignee or by the shipper to the carrier is effected by setting the car on the team track or private siding or, in the case of less-than-carload traffic, at the carriers' freight station. But the usual method is not the exclusive method. The underlying requirement in all cases is that the carrier shall make a practical delivery or afford facility for practical loading.

It seems clear that the merchandise car and the packers' peddler car or branch-house car move in the same trains, and that the principal delay occasioned to the shipment of the wholesale grocers is due to the manner of handling their shipments through the carriers' freight houses. They now have available the station-order car which is similar to the packers' peddler car. If this car were availed of in the same manner, and to the same extent, as the packers' peddler car, it is not seen in what way complainants would be prejudiced. The mere fact that their operations are not adapted to the use of a car of that character, although the carriers hold themselves out to furnish such cars, would seem to negative any undue prejudice. We have in various decisions, as heretofore pointed out, approved rules governing the operation of peddler cars and we have in some instances directed the carriers to establish peddler-car routes against their protest. The handling of a shipment in a peddler car which is loaded in station order at the packer's plant as compared with a less-than-carload shipment, through the carriers' freight houses, is a handling under different circumstances and conditions. They are not comparable, and we do not think that a finding of undue prejudice could be based upon that condition, especially when the carriers hold themselves out to accord to the grocers reasonably comparable service.

While we do not think that the record warrants any such sweeping and drastic order as is sought by complainants, there are several situations in need of correction and which will, when corrected, go a long way toward satisfying the grocers' grievances. The mixing rules on fresh meats and packing-house products should be revised and made uniform. We think the rules proposed by the packers, except Morris & Company, in the *Consolidated Classification Case*, *supra*, are in the right direction. We agree with the complainant's contentions that lard substitutes, lard compounds, and canned meats with vegetable ingredients in excess of 80 per cent of the weight thereof should not be included in the mixing rules.

Upon consideration of all the facts of record we find (1) that the practices of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars is not shown to result in undue prejudice to complainants or unduly to prefer the packers; (2) that the various peddler-car rates and rules are not shown to be unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing-house products in peddler cars in southwestern territory is unduly prejudicial to complainants and unduly preferential of the packers in so far as said scale of rates applies on lard substitutes, cottonseed cooking oil, peanut cooking oil, corn cooking oil, soya-bean cooking oil, canned meats, canned soups, chicken tamale, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients; (3) that the various mixing rules governing fresh meats and packing-house products, in carloads, are unjust, unreasonable, and unduly prejudicial and that reasonable and nonprejudicial rules to apply for the future will be those suggested by the packers in this proceeding, except that lard compounds, lard substitutes, and canned meats with vegetable ingredients in excess of 80 per cent of the weight thereof, should be excluded therefrom.

The evidence herein has necessarily and properly been along broad and general lines. While there is unquestionably sufficient evidence to warrant these findings and an order in respect thereof as to many of the large carriers of the country, whose practices and policies would doubtless be controlling as to all others, the record is not complete with respect to the practices of some of the defendants. The tariff situation presented is complex. It is appropriate that the carriers should undertake promptly a revision of their rules and schedules in conformity with the findings here made. We will expect them to do so, and the record will be held for that purpose for a period of 90 days from the service of this report. At the expiration of that period we will consider the entry of an appropriate order.

COMMISSIONER CAMPBELL did not participate in the disposition of this case.

### APPENDIX.

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Rule 630. Individual car for one consignee at one destination. (See Note.)

- (A) Upon reasonable notice, carriers will furnish or will allow shippers to use or will participate with connecting carriers in handling refrigerator cars to be loaded by shippers at their own expense with freight as specified below (except "Meat Peddler Cars," for which see Rule No. 625) from one consignor at one point of origin to one consignee at one destination (See Note) when aggregate weight is not less than 15,000 pounds per car or when freight charges are assessed on basis of 15,000 pounds per car. This rule will apply only as follows:
- (1) On shipments of butter, cheese, eggs, dressed poultry, and on game, in straight or mixed lots, when moving on basis of less-than-carload or any quantity freight rates and covered by tariffs governed by the Official Classification or Southern Classification. \* \* \*
  - (2) On shipments of perishable freight, in straight or mixed lots, moving on less-than-carload or any quantity freight rates, when covered by tariffs governed by the Western Classification. \* \* \*
- (B) Any deficit in the weight necessary to make up 15,000 pounds will be charged for on basis of the freight rate applicable to the highest rated articles in the car.
- (C) No charge will be made for the service (when and where furnished) of icing, re-icing, refrigeration, warm car service, or protective service against cold, on traffic handled under this rule, except as may be specifically published in separate tariffs of carriers parties hereto.

NOTE.—Where carriers' tariffs provide for the handling of commodities shown in paragraph (A)—(Sub-paragraphs 1 and 2)—from one or more consignors at one or more points of origin on the direct route, to one or more consignees at one or more points of destination on the direct route, the aggregate weight of such commodities must not be less than 15,000 pounds or the deficit will be charged for as provided in paragraph (B). The charges, if any, for protective service will be as provided for in paragraph (C), and in the absence of lawful specific tariff provisions to the contrary, must be prepaid or guaranteed by one consignor, to be collected from one consignee to be designated by the shipper.

No. 10672.

## SECURITY MILLS &amp; FEED COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN RAILWAY  
COMPANY, ET AL.

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Submitted April 15, 1920. Decided June 23, 1921.

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1. Rates on blackstrap molasses, in tank-car loads from New Orleans, La., Mobile, Ala., and Savannah, Ga., to Knoxville, Tenn., found unreasonable. Reasonable rate prescribed for the future and reparation awarded.
2. Such rates found unduly prejudicial to Knoxville to the extent that they exceeded and exceed the rates contemporaneously maintained on blackstrap molasses to Nashville, Tenn. Damage as a result of such undue prejudice not shown. Undue prejudice ordered removed.

*C. R. Hillyer* for complainant.*Frank W. Gwathmey* and *Henry Thurtell* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

*AITCHISON, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner, to which exceptions were filed by the defendants.

Complainant, a corporation, manufactures mixed feeds for live stock at Knoxville, Tenn. By complaint filed May 26, 1919, it alleges that the rates on blackstrap molasses, hereinafter referred to as blackstrap, in tank-car loads, from New Orleans, La., Mobile, Ala., and Savannah, Ga., to Knoxville, and the through rates from the points of origin of the blackstrap to the points of consumption of the feeds into which it is mixed are unreasonable, unjustly discriminatory, and unduly prejudicial to Knoxville and unduly preferential of Memphis, Tenn., and other named points. We are asked to prescribe just and reasonable rates for the future, and to award reparation.

The evidence was mainly directed to the rates on blackstrap from the named points of origin to Knoxville, and our findings will be confined to the issues with respect to those rates.

Knoxville is in the eastern part of Tennessee and is served by the Southern Railway and the Louisville & Nashville Railroad. The principal markets of consumption of the mixed feeds manufactured by complainant are in Carolina and Virginia territory. Complainant obtains grain by-products for use in making the feeds from Ohio and Mississippi river crossings, blackstrap mainly from New Orleans, Mobile, and Savannah, and various nut and seed by-products from points in the south and southeast. Knoxville is therefore in the direct line of movement of the raw materials to the points of consumption of the mixed feed, a fact particularly emphasized by complainant.

The character of blackstrap as the lowest grade of cane molasses, and as a desirable traffic has been dwelt upon in former reports and need not be again described here. It is chiefly used in the manufacture of mixed feeds, though considerable quantities are, or during the war period were, used in making vinegar and alcohol. The greater portion of the blackstrap handled from New Orleans and Mobile is imported from Cuba; that which moves on the Savannah rates is derived from Cuban raw sugar refined at Port Wentworth, a point in the Savannah switching district. In this report the term Savannah will be understood as including Port Wentworth. The bulk of the movement is to points where feed mills are located. At the time of the hearing the value of blackstrap was less than 8 cents per gallon. During the period of the war it was worth considerably more.

The live-stock feeds manufactured by complainant contain from 10 to 30 per cent of blackstrap. At the time of the hearing complainant's shipments of these feeds averaged about 400 tons per month, of which approximately 60 per cent moved to points within 120 miles of Knoxville. Complainant claims that the radius of distribution of its manufactured products is greatly restricted, as compared with that of other feed manufacturers with which it comes into competition, because of the relatively higher rates which it is obliged to pay on blackstrap.

The following table is a comparison of the rates applicable to blackstrap moving from the points of origin named to Knoxville and representative points at which active competitors of complainant are located. The rates shown from New Orleans and Mobile, except those to Knoxville, are import rates, and all rates cited herein, except to Knoxville, are released rates on blackstrap of an agreed value of 8 cents or less per gallon. Rates shown in this report apply per 100 pounds and are those in effect at the time of the hearing.

To—	From New Orleans.			From Mobile.			From Savannah.		
	Dis- tance.	Rate.	Revenue per ton- mile.	Dis- tance.	Rate.	Revenue per ton- mile.	Dis- tance.	Rate.	Revenue per ton- mile.
	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.
Knoxville, Tenn.....	608	41.5	13.65	508	36.5	14.37	446	37.5	16.81
Cincinnati, Ohio.....	836	20.5	4.9	746	20.5	5.8	734	27	7.36
Louisville, Ky.....	749	19	5.07	670	19	5.67	712	27	7.56
Memphis, Tenn.....	395	12.5	6.33	384	12.5	6.51	678	27	7.96
Nashville, Tenn.....	563	19	6.75	484	19	7.85	561	25	8.91
Owensboro, Ky.....	723	19	5.26	636	19	6.07	691	27	7.81

Subsequent to the hearing the import rates were canceled, resulting in increasing the rates from New Orleans and Mobile to Cincinnati and Memphis 4 cents and to other points, except Knoxville, 3.5 cents. A tabulation in the record shows a comparison of the rate of 41.5 cents on molasses from New Orleans to Knoxville for a haul of 608 miles with rates on blackstrap applicable from New Orleans to 24 points at which approximately 70 feed mills are operated, many of which are in competition with complainant. Rates to the destination points shown, other than Knoxville, range from 12.5 cents for a distance of 395 miles to 35 cents for 1,281 miles.

The wide disparity in the rates to Knoxville and those to the other points is the result of the application of the regular molasses rates on shipments to Knoxville and the maintenance to the other points of specific rates on blackstrap, which in most cases are substantially lower than the molasses rates. It is the general practice of the carriers to publish special blackstrap rates to points to which there is any considerable movement, and the bulk of the blackstrap traffic moves on such rates.

Defendants contend that the molasses rates are reasonable for application to blackstrap; that the special rates on that commodity were established not with regard to the proper measure of return for the service performed, but upon considerations of what the traffic itself would bear; and that such rates have been maintained only because of compelling carrier competition. As sustaining these contentions, they refer particularly to our decisions in *Molasses Rates to Knoxville, Tenn.*, 30 I. C. C., 613; No. 6096, *Macon Chamber of Commerce v. L. & N. R. R. Co.*, unreported; No. 6332, *Wilkes & Co. v. A. G. S. R. R. Co.*, unreported; and *Darragh Co. v. St. L., I. M. & S. Ry. Co.*, 56 I. C. C., 282.

In *Molasses Rates to Knoxville, Tenn.*, *supra*, we permitted the carriers to cancel a specific rate on blackstrap from New Orleans to Knoxville and to apply the molasses rate in its stead. The grounds of the decision are indicated by the following paragraph from that case:

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Knoxville is the only point in southern territory where blackstrap is on a rate plane different from that of other grades of sugar-cane molasses, and this only since November 9, 1912. The special rate was then named at the solicitation of the manufacturer who now protests, and, so the carriers say, upon misleading representations as to the nature of the commodity and the traffic expected to move. Be that as it may, it is the fact, to be read from the tariffs, that the proposed rate merely cancels a special rate to one destination, and puts blackstrap to Knoxville upon the rate plane governing that commodity in all southeastern territory. Other southeastern points also use blackstrap in the manufacture of mixed feeds for animals. It is not to be understood, however, that blackstrap should always take the rate applicable to all other molasses and to sirup generally.

From the record in *Macon Chamber of Commerce v. L. & N. R. R. Co.*, *supra*, it appeared that blackstrap moved freely at the molasses rates and that the cancellation of the special rate on blackstrap to Knoxville removed the one exception to the general adjustment in southern territory whereunder the molasses rates were applied to blackstrap.

We refused in *Wilkes & Co. v. A. G. S. R. R. Co.*, *supra*, to condemn as unreasonable a rate of 21 cents on blackstrap from Mobile to Nashville, Tenn., but did find it unjustly discriminatory to the extent that it exceeded the rate contemporaneously maintained from Mobile to St. Louis, Mo. The latter rate was then 15 cents and in complying with the order the carriers established the same rate to Nashville.

Since those decisions many special rates on blackstrap have been established from Gulf ports to points in the Mississippi, Ohio, and Missouri rivers valleys, and there are now on file with us such rates from Gulf and south Atlantic ports to a number of mixed-feed producing points in the southeast. Generally speaking, such rates are on a lower level than those on molasses.

Defendants compared the rates to Knoxville with the molasses rates to other southeastern points to which there are no special rates on blackstrap. Although so considered the Knoxville rates compare favorably with the others, it is apparent that such other rates move no considerable tonnage of blackstrap.

The rates initiated by the Director General were not in issue in the *Darragh Case*, *supra*, and we were without authority to enter an order with respect to rates for the future. There was no evidence in support of the allegation of undue prejudice and the only question before us was the reasonableness of the past rates on blackstrap from New Orleans to Little Rock, Ark. The conditional import rate was 22 cents. We found that the record did not show the rates to have been unreasonable and dismissed the complaint. It appeared in that case that the price of blackstrap at New Orleans was 5.5 cents in June, 1914, but had risen to 23 cents in July, 1917.

But the issue before us upon this record is not whether complainant's shipments were charged the regular molasses rates or were accorded special blackstrap rates, but whether the rates paid were unreasonable or unduly prejudicial. In determining the matter of reasonableness as well as of undue prejudice due consideration should be given to other rates charged on the same commodity by carriers serving the same or competing localities. *Corporation Commission of Virginia v. C. & O. Ry. Co.*, 40 I. C. C., 24, 28. Where, as in the present case, such other rates apply from the same points of origin for similar distances and to farther distant points, and in some instances over lines which also serve the complaining point, the comparisons have an increased pertinency. The following quotation from *In Re C., St. P. & K. C. Ry. Co.*, 2 I. C. C., 231, 265, is illuminative:

The Commission is of the opinion that the phrase "rates reasonable in and of themselves," which is often made use of in similar cases to the present, is very likely to be misleading. It is a phrase which seems to imply that the particular rates may be considered by themselves as if they were and could be affected by no others; and applying the phrase to the Onelda rates, that their reasonableness was to be determined without taking any others into account. But it is not the theory of the Act to regulate commerce that the reasonableness of rates can thus be separately and independently determined. On the contrary, it is assumed in the Act that persons, corporations, and localities are interested not only in the rates charged to them but in the rates which are charged to others also; and while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined. No rates can therefore be reasonable in and of themselves within the contemplation of the Act which are made regardless of proportion. A fifty-four-cent rate, Chicago to Onelda, may be perfectly just and reasonable "in and of itself" when the St. Paul rate is sixty cents, but be plainly unjust and unreasonable when the St. Paul rate is reduced to forty cents. When the St. Paul rate is reduced a new element is brought into the consideration of the Onelda rate—an element that must certainly have some influence; it cannot be ignored altogether as it has been in this instance. On this point we refer to what is said in *Boards of Trade, etc. v. The Chicago, Milwaukee and St. Paul Railway Co.*, 1 Int. C. C. Rep. 215, and *Raymond v. Same Defendant*, *ibid.* 230, where relative rates were somewhat considered. We do not think, as the case stands before us, that the Onelda rates appear to be "in and of themselves" in any legal sense fair rates. The disparity between them and the rates for the greater distance makes them *prima facie* unjust and unreasonable.

In the instant case it appears that the rates applied to blackstrap to Knoxville are much higher than rates on the same article to most other feed-manufacturing points. As shown by the table defendants maintained a rate of 27 cents from Savannah to Cincinnati, Louisville, Owensboro, and Memphis, for distances ranging from 678 to 784 miles, and a rate of 25 cents to Nashville for a distance of 561 miles. The application of the same rate as applied to Nashville to shipments



moving from that port to Knoxville for a distance of 446 miles would have been entirely fair to the carriers.

The rates from New Orleans and Mobile are on a somewhat lower basis than from Savannah as a result of the competition in moving imported blackstrap to points in the Mississippi Valley. As heretofore noted the cancellation of the import rates resulted in increasing the blackstrap rates in amounts from 3.5 to 4 cents, the rates to Nashville and Cincinnati becoming 22.5 and 24.5 cents, respectively. For 558 miles, the average of the short-line distances from New Orleans and Mobile to Knoxville, a rate of 25 cents would yield earnings of 8.96 mills per ton-mile, and, on a loading of 90,000 pounds, of 40.32 cents per car-mile. These earnings compare favorably with those under the rates shown from Savannah for greater distances, and with the earnings under the rates from New Orleans and Mobile to Nashville and Cincinnati. The rates on molasses to Knoxville and on blackstrap to competing points in the southern group, including those named in the above table, were increased 25 per cent, effective August 26, 1920, in accordance with our decision of July 29, 1920. The rate of 25 cents similarly increased would become 31.5 cents.

The disparity between the rates applied from the ports mentioned to Knoxville and those to competing points clearly results in undue prejudice to complainant. As a result of the *Wilkes Case, supra*, and carrier competition, the rates on blackstrap from New Orleans and Mobile to St. Louis, Louisville, and some other Ohio River crossings, are also applied from the same points to Nashville. In view of the slight difference in the average of the short-line distances from New Orleans and Mobile to Nashville on the one hand, and the average of such distances from the same points to Knoxville, on the other, we think Knoxville should enjoy rates on blackstrap from such points no higher than those contemporaneously maintained to Nashville. On the facts before us we are also of opinion that Knoxville should take rates on blackstrap not in excess of those to Nashville on traffic from Savannah.

Upon a consideration of this record we are of opinion and find that the rates applicable to blackstrap, of or released to a value of 8 cents or less per gallon, in tank-car loads, from Savannah, Mobile, and New Orleans to Knoxville were, are, and for the future will be, unreasonable to the extent that they exceeded and exceed 25 cents per 100 pounds prior to August 26, 1920, and 31.5 cents per 100 pounds thereafter. We further find that such rates were, are, and for the future will be, unduly prejudicial to Knoxville and unduly preferential of the competing points named in the above table to the extent that they exceeded and exceed the rates contemporaneously main-

tained on like traffic from the same points of origin to Nashville. Complainant has made no sufficient showing upon which to base a finding of damages resulting from the undue prejudice. We further find that complainant made shipments of blackstrap at the rates herein found to have been unreasonable and paid and bore the charges thereon and is entitled to reparation in the amount of the difference between the rates paid and those herein found reasonable, with interest. The exact amount of reparation can not be determined upon this record and complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

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No. 11582.

TRAFFIC BUREAU, CHAMBER OF COMMERCE,  
PHOENIX, ARIZ., ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC  
COMPANY, ET AL.

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*Submitted April 12, 1921. Decided June 22, 1921.*

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1. Rates on sugar, in carloads, from California points to Phoenix, Ariz., found unreasonable. Reasonable rate prescribed for the future.
2. Following *Phoenix Chamber of Commerce v. Director General*, 62 I. C. C., 368, prayer for the establishment of through routes and joint rates from San Francisco, Calif., by way of Phoenix, to points on the Southern Pacific, Maricopa, Ariz., to El Paso, Tex., denied.

*Roland Johnston* for complainants.

*F. A. Jones* for Arizona Corporation Commission, intervener.

*E. W. Camp, Elmer Westlake, G. H. Baker, and M. A. Cummings* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.  
AITCHISON, *Commissioner*:

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, Hall-Pollock Company, and Haas-Baruch & Company, corporations, and the Arizona Grocery Company, a partnership.

The three firms named are engaged in the grocery business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of sugar from points in California to Phoenix, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation on all shipments moving subsequently to May 2, 1916, and to establish through routes and joint rates from San Francisco, Calif., by way of Phoenix, to Maricopa, Ariz., and points east thereof, on lines of the Southern Pacific Company, to and including El Paso, Tex. The Arizona Cor-

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poration Commission intervened on behalf of complainants. The allegation of a fourth section violation was abandoned at the hearing. Rates are stated herein in amounts per 100 pounds.

Phoenix is the only point in Arizona common to the lines of the Atchison, Topeka & Santa Fe Railway and the Southern Pacific. It is located on the branch of the Santa Fe extending south from Ash Fork, Ariz., but is served by that carrier on traffic from California by means of a branch line known as the Parker cut-off, which leaves the main line at Cadiz, Calif., and connects with the Ash Fork branch at Wickenburg, Ariz. Phoenix is served by the Southern Pacific through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa, a point on the main line 35 miles southerly from Phoenix. The short-line mileage from San Francisco to Phoenix is via the Santa Fe over the Parker cut-off; from Los Angeles, via the Southern Pacific lines.

Sugar is produced at various points in California. Hawaiian cane sugar is refined at San Francisco and at Crockett, a point 29 miles east of San Francisco on the Southern Pacific; beet sugar is produced at Alvarado, Betteravia, Spreckels, Los Alamitos, Dyer, Delhi, Oxnard, and other points in the central and southern portions of the state. For the purpose of stating rates to Arizona, the refining and producing points of origin in California are included in one group. Rates on sugar from California are also grouped as to destination points. On the main line of the Santa Fe a destination group extends from Yucca, Ariz., to El Paso, and on the main line of the Southern Pacific from Yuma, Ariz., to El Paso. Los Angeles is the nearest point in the California group to Phoenix, and San Francisco possibly the farthest. The distances to Phoenix via the Santa Fe are 489 and 800 miles, and via the Southern Pacific, 451 and 920 miles, respectively, from the two points of origin.

On May 1, 1916, the rates on sugar from the California group to Phoenix were 60 cents, minimum weight 60,000 pounds, and 65 cents, minimum weight 36,000 pounds. Contemporaneously rates from the California group to points in the destination groups described were 5 cents lower than the corresponding Phoenix rates. This difference of 5 cents in favor of main-line points was fixed by us in *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 158, in which we found the Phoenix rate of 75 cents, minimum 36,000 pounds, unreasonable to the extent that it exceeded, by more than 5 cents, the main-line rate to Maricopa. On June 25, 1918, these rates were increased 25 per cent, the main-line rates becoming 69 and 75 cents and the Phoenix rates 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increases, and the rates to main-line points became 77 and 82 cents on November

25, 1919, and to Phoenix, 82 and 87 cents on February 18, 1920. On February 29, 1920, defendants canceled the rates to main-line and branch-line points, including Phoenix, under the lower minimum weight published in connection with roads under federal control and, as to such roads, increased the Phoenix rate under the minimum weight of 60,000 pounds to 83.5 cents which, apparently, was done by advancing the 5-cent difference over main-line points to 6.5 cents. In schedules filed to become effective May 14, 1920, the carriers attempted to bring the rates of nonfederal lines into harmony with those of the lines previously under federal control, but upon protest we suspended the items carrying such increases. In *Sugar from California Points to Arizona*, 58 I. C. C., 737, we held that the cancellation of the 36,000-pound minimum was justified and vacated the order of suspension. The present rates, including the general increases authorized by us on July 29, 1920, are 96.5 cents to main-line points and \$1.045 to Phoenix, minimum weight 60,000 pounds. The Phoenix rate applies to practically all points on the Arizona Eastern north of Maricopa and to all points on the branch line of the Santa Fe south of Ash Fork and as far west as Parker, Ariz. There is no movement of sugar from California through Phoenix to points beyond taking lower rates.

Complainants admit that the grouping of California sugar-producing points is advantageous, as it gives them the benefit of a wide purchasing market on a uniform rate. They contend, however, that the rates to Phoenix are unreasonable, in comparison with lower rates from the California group to points involving hauls for distances which are greatly in excess of those to Phoenix. In the subjoined statement the revenues per car, per ton-mile, and per car-mile yielded by the rates to Phoenix are compared with revenues produced by certain of the rates cited by complainants. The rates shown include the general increases authorized by us on July 29, 1920.

From—	To—	Distance.	Rate per 100 pounds.	Revenue.		
				Per car.	Per ton-mile.	Per car-mile.
		Miles.			Mills.	Cents.
Los Angeles, Calif.....	Phoenix, Ariz.....	451	\$1.045	\$627.00	46.3	139
San Francisco, Calif.....	do.....	800	1.045	627.00	26.1	78.3
Betteravia, Calif.....	do.....	655	1.045	627.00	31.9	95.7
Do.....	El Paso, Tex.....	1,020	1.965	579.00	18.9	58.7
New Orleans, La.....	do.....	1,192	1.080	388.80	18.1	55.6
San Francisco, Calif.....	St. Paul, Minn.....	2,154	1.025	615.00	10	30.6
Los Angeles, Calif.....	Chicago, Ill.....	2,281	1.0625	657.00	9.8	29.6

<sup>1</sup> Minimum weight 60,000 pounds.

<sup>2</sup> Minimum weight 36,000 pounds.

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the

country are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognized the potency of market competition in *Fourth Section Violations in Rates on Sugar*, 81 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to charge lower rates from California to Trinidad, Colo., and points east thereof than it contemporaneously maintained to intermediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

A partial list of the shipments on which reparation is sought shows that 48 carloads moved during the period June, 1919, to August, 1920, inclusive, 34 being routed via Southern Pacific and 14 via Santa Fe. A statement filed by the defendants shows that during the year 1916, 1917, 1919, and the first six months of 1920, 348 cars aggregating 9,428 tons moved from California points to Arizona via Santa Fe, of which 78 cars aggregating 2,229 tons moved to Phoenix.

From Betteravia, which may be taken as fairly representative of the California group, the present rate to Phoenix yields, for a distance of 655 miles, revenues of \$627 per car, 95.7 cents per car-mile, and 31.9 mills per ton-mile upon the basis of the tariff minimum weight of 60,000 pounds. A substantial volume of sugar moves from California to Phoenix in carloads. While, no doubt, relatively lower rates are justified to more distant points where the force of market competition is controlling, nevertheless, Phoenix is entitled to rates, which, measured by present-day standards, are just and reasonable. If, however, the rates to competitive points are remunerative, then clearly the rates to Phoenix are excessive, even after giving due consideration to the volume of traffic handled to the points in question,

and the character of the haul into Arizona. The rate of 96.5 cents from California is carried on the main line of the Southern Pacific for a distance of 400 miles east of Maricopa. The application of the same rate to Phoenix, but 35 miles distant from Maricopa does not appear to be unreasonable. The Southern Pacific and the Arizona Eastern are properly treated as one line in this instance. *Pacific Creamery Co. v. S. P. Co.*, 42 I. C. C., 93, 96.

Complainants contend that the maintenance of rates from California of \$1.045 to Phoenix and 96.5 cents to Tucson is unduly prejudicial to Phoenix, to the undue preference and advantage of Tucson. The record shows that Phoenix jobbers sell sugar at several points in territory contiguous to both Phoenix and Tucson, in competition with jobbers located at the latter point. While there is an indication that in some instances the Phoenix jobbers must shrink their profits to compete with Tucson, there is no evidence to show that this results from the difference in rates from California to the two competing points.

Complainants' request for the establishment of through routes and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific to and including El Paso is substantially the same as was made in *Phoenix Chamber of Commerce v. Director General*, 62 I. C. C., 368, and the evidence is identical by reason of the stipulation into this record of the testimony there introduced. In that case we found that the proposed arrangement had not been shown to be necessary or in the public interest and denied the petition. There is no basis for a different finding on this record.

We find that the rates attacked were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed 96.5 cents. There is no evidence of record that complainants made shipments of sugar from California points to Phoenix, and paid and bore charges thereon at rates higher than those herein found reasonable. In the event that such shipments were made, complainants should file statements under rule V of the Rules of Practice, showing the details of such shipments, accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

The prayer for a through route and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific, to and including El Paso, is denied.

An appropriate order will be entered.

No. 2420.

LOUISIANA CENTRAL LUMBER COMPANY ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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*Submitted March 15, 1921. Decided June 14, 1921.*

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Amounts of reparation fixed on shipments of yellow-pine lumber and lumber products from points in Louisiana to points in Nebraska and Kansas in conformity with former reports, 19 I. C. C., 333, and 35 I. C. C., 38.

*John S. Burchmore and Luther M. Walter* for complainants.

*W. Larmer* for Chicago, Burlington & Quincy Railroad Company; *L. T. Wilcox* for Union Pacific Railroad Company; *A. B. Enoch*, for Chicago, Rock Island & Pacific Railway Company; and *F. H. Moore* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiner. In a few instances we have awarded reparation in amounts differing from those recommended by him.

Prior to December 10, 1908, defendants maintained joint rates, lower than the combinations through Lincoln and Omaha, Nebr., on yellow-pine lumber and lumber products, in carloads, from Louisiana, Texas, Arkansas, and Missouri to points in Kansas, Colorado, Wyoming, and the western part of Nebraska. At various times between December 10, 1908, and February 7, 1909, they canceled these joint rates, thereby making applicable the higher combinations. Shortly thereafter defendants reestablished the joint rates previously in effect to Kansas, Colorado, and Wyoming points but not to points in western Nebraska. On June 2, 1910, we required a reduction in the factors to Omaha and Lincoln from 26.5 to 25 cents per 100 pounds. *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 18 I. C. C., 532. In our original report herein, 19 I. C. C., 333, we found the resulting combinations to points in western Nebraska reasonable except where the combinations applicable to specified intermediate points exceeded the Colorado common-point and Cheyenne, Wyo., rates of 37 and 40 cents, respectively. We prescribed joint rates of 37 and 40 cents to



those intermediate points, and awarded reparation. Reparation was also awarded on shipments moving to Kansas, Colorado, and Wyoming during the period when the higher rates were in effect. In our second report, 35 I. C. C., 38, we found the rates to eastern and interior Nebraska points unreasonable to the extent that they exceeded 25 cents to Omaha or Lincoln plus the local rates for interstate application beyond; also that certain specified complainants were entitled to reparation under the findings in that and in the original report. Complainants were directed to prepare and submit to defendants for verification statements giving certain details of the shipments upon which reparation was claimed.

Upon defendants' failure to verify the statements the case was set for further hearing. Certain lines have verified some of the statements, others refuse to verify them until their connections join in the verification, and still others are unable to do so because their records have been lost or destroyed. Copies of complainants' statements, with corrections found necessary, were submitted at the hearing. They cover shipments from points in Louisiana only to destinations throughout Nebraska and to Woodruff and St. Francis, Kans. Defendants offered no evidence.

At the time of movement there were no joint rates to western Nebraska and the Colorado common-point rate of 37 cents and the Cheyenne rate of 40 cents were not applicable as maxima. The joint rates in effect prior to the movement and those subsequently established applied by way of Kansas City and junction points in Kansas and not by way of Lincoln or Omaha. Counsel for the Union Pacific and Chicago, Burlington & Quincy object to an award of reparation on shipments moving through Lincoln or Omaha on any basis other than the Omaha or Lincoln combinations. In our second report we refused to award reparation on such shipments based on the joint rates in effect by way of Kansas City and junction points in Kansas and based the award of reparation on a rate of 25 cents to Omaha or Lincoln and the rates concurrently in effect beyond for interstate traffic. Most of the shipments moved through Omaha or Lincoln and reparation will be awarded herein upon the same basis as in the second report. In a few instances, namely, to Cambridge, North Platte, Wauneta, Eustis, and Wallace, Nebr., and to St. Francis and Woodruff, Kans., the rates charged indicated that the shipments moved through southern junctions and via routes over which the subsequently established joint rates of 37 and 40 cents applied. With respect to such shipments reparation will be based on these joint rates.

As the unreasonableness of the through charges to most of the destinations was found to exist by reason of the factor to Omaha or

Lincoln, counsel for the Union Pacific and Chicago, Burlington & Quincy contend that the award of reparation should run against the carriers south of those cities only. This contention is opposed by the Kansas City Southern. In *Riverside Mills v. A. & S. Steamboat Co.*, 40 I. C. C., 501, we said:

If a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers, collectively, that participated in the transportation.

Following that decision our order herein will run against the participating carriers collectively.

By appropriate order we transferred to and made a part of this record claims of the Ozark Land & Lumber Company and of the Missouri Lumber & Mining Company originally filed in No. 3940, Sub-Nos. 6 and 13, respectively, "in so far as they involve shipments from southwestern lumber producing territory to points beyond Omaha and Lincoln, Nebr., upon which combination rates were charged of which the 26½-cent rate to Lincoln or Omaha was a factor." These claims cover shipments moving at rates made differentials under the factor to Lincoln or Omaha and can not properly be considered herein.

We have by appropriate findings passed upon the rates and specified the parties entitled to reparation. We further find that the following-named complainants made shipments as described upon which rates higher than those found reasonable were collected by defendants; that they paid and bore the charges thereon and have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates found reasonable in our former report; and that they are entitled to reparation in the amounts and from the respective carriers shown in the following table, with interest:

Louisiana Central Lumber Company:

O. & N. W., M. P., C. B. & Q.....	\$1, 218. 89
O. & N. W., M. P., U. P.....	729. 36
O. & N. W., M. P., St. J. & G. I., U. P.....	48. 78

Louisiana Long Leaf Lumber Company:

V. F. & W., K. C. S., C. R. I. & P., C. B. & Q.....	238. 09
V. F. & W., K. C. S., U. P.....	14. 68
V. F. & W., K. C. S., C. B. & Q.....	185. 42
V. F. & W., K. C. S., M. P., U. P.....	15. 16
V. F. & W., K. C. S., C. R. I. & P., U. P.....	110. 52
V. F. & W., K. C. S., M. P., C. B. & Q.....	65. 60
V. F. & W., T. & P., M. P., C. B. & Q.....	120. 38
V. F. & W., T. & P., M. P., U. P.....	83. 48

Bowman-Hicks Lumber Company:

L. W., K. C. S., C. R. I. & P., C. B. & Q.....	480. 88
K. C. S., U. P.....	244. 38

**Bowman-Hicks Lumber Company—Continued.**

L. W., K. C. S., C. R. I. & P., U. P.	\$233.83
L. W., K. C. S., C. B. & Q.	80.99
L. & W., K. C. S., C. G. W., C. B. & Q.	7.75

**W. R. Pickering Lumber Company:**

K. C. S., C. B. & Q.	184.02
K. C. S., C. R. I. & P., C. B. & Q.	380.80
K. C. S., U. P., C. B. & Q.	49.93
K. C. S., M. P., C. B. & Q.	37.90
K. C. S., C. R. I. & P., U. P.	76.27

**Globe Lumber Company:**

S. L. B. & S., L. & A., St. L. & S. F., St. J. & G. I.	5.94
S. L. B. & S., V. S. & P., M. K. & T., C. B. & Q.	87.61
S. L. B. & S., L. & A., St. L. I. M. & S., M. P., C. B. & Q.	5.16
S. L. B. & S., V. S. & P., K. C. S., C. B. & Q.	6.14
S. L. B. & S., V. S. & P., M. K. & T., U. P.	106.03
S. L. B. & S., L. & A., St. L. I. M. & S., M. P., U. P.	7.02

**Longville Lumber Company:**

L. & P., N. O. T. & M., T. & B. V., C. R. I. & G., U. P., St. J. & G. I.	7.49
L. & P., N. O. T. & M., B. S. L. & W., T. & B. V., C. R. I. & G., C. R. I. & P., C. B. & Q.	7.26
L. & P., St. L. I. M. & S., M. P., C. B. & Q.	7.77
L. & P., N. O. T. & M., B. S. L. & W., T. & B. V., C. R. I. & G., C. R. I. & P., U. P.	27.99
L. & P., St. L. I. M. & S., M. P., U. P.	7.07

**Rapides Lumber Company:**

W. & L. C., C. R. I. & P., C. B. & Q.	45.66
W. & L. C., M. L. & T., L. & W., T. & N. O., H. & T. C., M. K. & T., C. B. & Q.	52.67
W. & L. C., C. R. I. & P., U. P.	34.07
W. & L. C., M. L. & T., L. W., T. & N. O., H. & T. C., M. K. & T. of T., M. K. & T., U. P.	8.48
W. & L. C., M. L. & T., L. W., T. & N. O., H. & T. C., M. K. & T. of T., U. P.	6.37
W. & L. C., M. L. & T., L. W., T. & N. O., H. & T. C., C. R. I. & G., C. R. I. & P., U. P.	43.66

The abbreviations above used should be understood as meaning the following lines:

B., S. L. & W.	Beaumont, Sour Lake & Western Railway Company.
C., B. & Q.	Chicago, Burlington & Quincy Railroad Company.
C. G. W.	Chicago Great Western Railroad Company.
C., R. I. & G.	Chicago, Rock Island & Gulf Railroad.
C., R. I. & P.	Chicago, Rock Island & Pacific Railway Company.
H. & T. C.	Houston & Texas Central Railroad Company.
K. C. S.	Kansas City Southern Railway Company.
L. & A.	Louisiana & Arkansas Railway Company.
L. & P.	Louisiana & Pacific Railway Company.

L. & W.-----Loring & Western Railway Company.  
L. W.-----Louisiana Western Railroad Company.  
M., K. & T.-----Missouri, Kansas & Texas Railway Company.  
M., K. & T. of T.-----Missouri, Kansas & Texas Railway of Texas.  
M. L. & T.-----Morgan's Louisiana & Texas Railroad & Steamship Company.  
M. P.-----Missouri Pacific Railway Company.  
N. O., T. & M.-----New Orleans, Texas & Mexico Railway Company.  
O. & N. W.-----Ouachita & Northwestern Railroad Company.  
S., L. B. & S.-----Sibley, Lake Bisteneau & Southern Railway Company.  
St. J. & G. I.-----St. Joseph & Grand Island Railway Company.  
St. L., I. M. & S.-----St. Louis, Iron Mountain & Southern Railway Company.  
St. L. & S. F.-----St. Louis & San Francisco Railroad Company.  
T. & B. V.-----Trinity & Brazos Valley Railroad.  
T. & N. O.-----Texas & New Orleans Railroad Company.  
T. & P.-----Texas & Pacific Railway Company.  
U. P.-----Union Pacific Railroad Company.  
V., F. & W.-----Victoria, Fisher & Western Railroad Company.  
V., S. & P.-----Vicksburg, Shreveport & Pacific Railway Company.  
W. & L. C.-----Woodworth & Louisiana Central Railway Company.

The following lines, namely, Beaumont, Sour Lake & Western Railway Company, Chicago Great Western Railroad Company, Houston & Texas Central Railroad Company, New Orleans, Texas & Mexico Railway Company, Trinity & Brazos Valley Railroad, and Vicksburg, Shreveport & Pacific Railway Company, are not named as defendants in this proceeding, but they may participate in the payment of reparation.

From the statements submitted by complainants it appears that certain of the shipments were overcharged. The amounts of these overcharges are included in the awards above set forth.

**An appropriate order will be entered.**

No. 11168.<sup>1</sup>

D. NAGASE & COMPANY, LIMITED,

v.

DIRECTOR GENERAL, AS AGENT, GREAT NORTHERN  
RAILWAY COMPANY, ET AL.

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*Submitted May 27, 1921. Decided June 15, 1921.*

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Rates charged on imported potato starch, in carloads, from Seattle and Tacoma, Wash., and from San Francisco, Calif., to Chicago, Ill., New York, N. Y., and points in Pennsylvania and Massachusetts found to have been unreasonable and unjustly discriminatory. Reparation awarded.

*Richard Townsend and Gilroy & Townsend* for D. Nagase & Company, Limited, and W. R. Grace & Company; *Levy & Becker* and *C. J. Fagg* for Mitsui & Company, Limited, and cocomplainants in No. 11399; and *E. D. Melcher* for Thomas W. Simmons & Company.

*Samuel H. Blank* for Takata & Company, intervener.

*John F. Finerty, Thomas M. Woodward, John C. Brooks, R. J. Hagman,* and *Thomas Balmer* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

##### By DIVISION 1:

These cases, involving the same issues, will be disposed of in one report. Exceptions were filed by the complainants in Nos. 11168 and 11592 and by the Director General in Nos. 11399 and 11767 to the separate reports as proposed by the examiners. Oral arguments were had before us in Nos. 11168, 11399, and 11592.

Complainants and intervener are corporations and copartnerships engaged in the import business. By complaints seasonably filed they allege that the rates charged on numerous carloads of potato starch imported from Japan and shipped during the year 1918 from the Pacific coast ports of Seattle and Tacoma, Wash., and San Francisco, Calif., to Chicago, Ill., New York, N. Y., and points in Pennsylvania and Massachusetts, were unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates herein are stated in amounts per 100 pounds.

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<sup>1</sup> This report also embraces No. 11399, Mitsui & Company, Limited, et al., v. Director General, as Agent, Great Northern Railway Company, et al.; No. 11592, W. R. Grace & Company v. Director General, as Agent, Great Northern Railway Company, et al.; No. 11767, Thomas W. Simmons & Company v. Director General, as Agent.

At the time the shipments moved no commodity rates, either import or domestic, were in effect on potato starch from Pacific ports to eastern defined territories. The applicable rates thereon were fifth-class rates of \$1.75 to Chicago and \$1.90 to New York and other destinations in transcontinental group A, prior to June 25, 1918, and \$2.19 to Chicago and \$2.375 to New York and other group-A points on and after that date, subject to a carload minimum of 36,000 pounds. Charges were collected at the applicable rates, except on shipments made by complainants in No. 11899, some of which were undercharged and a few overcharged. Charges on such shipments should be adjusted on the bases of the rates hereinafter found to have been reasonable.

Potato starch and potato flour are both rated fifth class by the governing western classification. For some time prior to June 25, 1918, there were import commodity rates of 75 cents, minimum 60,000 pounds, and 90 cents, minimum 40,000 pounds, on potato flour from Pacific coast ports to eastern defined territories. Under general order No. 28 these import rates were canceled, leaving domestic fifth-class rates to apply from north Pacific ports and domestic commodity rates of 94 cents, minimum 60,000 pounds, and \$1.125, minimum 40,000 pounds, applicable from California terminals to Chicago and New York.

On July 1, 1918, defendants established an import commodity rate of \$1.125 on potato flour, minimum 40,000 pounds, from Pacific coast ports to Chicago and New York. This rate was reduced to \$1 on May 29, 1919, effective which date an additional import rate of 94 cents, minimum 60,000 pounds, was established applicable to both potato starch and potato flour. The latter rates, increased by the amounts authorized by us on July 29, 1920, are now in effect excepting that the present import rate on potato flour to Chicago is \$1.10, minimum 40,000 pounds.

Effective April 7, 1919, a domestic rate of \$1.25, minimum 50,000 pounds, was established on potato starch and potato flour from north Pacific ports to Chicago and New York, which rate, with a minimum of 40,000 pounds, was published from California terminals on potato starch effective October 10, 1919. Present domestic rates of \$1.665, minimum 50,000 pounds, apply on both potato starch and potato flour from Pacific coast ports to Chicago and New York.

Complainants endeavored to show that there is no distinction between Japanese potato starch and potato flour, and that consequently their shipments were entitled to the lower potato-flour rates contemporaneously in effect. They state that in Japan the term "dempun," is applied generally to the product produced by the crushing, mashing, and drying of potatoes; and that in the United

States it is known and sold either as potato flour or potato starch. Their contention in this respect is not sustained. According to a bulletin of the United States Department of Agriculture—

the term flour when applied to potato or rice or cassava products has the same meaning as when applied to other products, \* \* \* that is, a fine, divided or powdered product containing proteids, fat, fiber, and ash constituents of the edible portions of potato, rice, or cassava, and not such a product containing such a starch alone.

It appears further, from the evidence of the defendants, that the important difference between potato starch and potato flour lies in its protein content, there being something less than 2 per cent of protein in the starch but a greater percentage in the flour. An analysis of samples taken from some of complainants' shipments showed less than 2 per cent of protein. The testimony also shows that while potato starch and potato flour can be used interchangeably in most manufacturing processes, this is not always the case. This evidence, while establishing the fact that potato flour and potato starch are distinct commodities, indicates, however, that this distinction rests upon chemical analysis and the use to which the commodity is to be put. The rule is well established that carriers can not maintain rates based upon the use to which a commodity is to be devoted. *Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co.*, 22 I. C. C., 394. In respect to the allegations of unjust discrimination and undue prejudice, we find that no evidence of undue prejudice is shown, but that potato starch and potato flour are a like kind of traffic within the meaning of that term as employed in section 2 of the interstate commerce act, and that the rates assailed were unjustly discriminatory to the extent that they exceeded the rates contemporaneously applicable between the same points on potato flour. Neither complainants nor interveners have proved damage by reason of such unjust discrimination.

The allegation of unreasonableness presents a different question. Complainants seek reparation on their shipments which moved prior to June 25, 1918, to the basis of the 75-cent import commodity rate then in effect on potato flour, and 94 cents on shipments which moved on and after that date. It is a matter of common knowledge that import rates lower than domestic rates are frequently, if not generally, influenced by considerations which are unrelated to, and have little, if any, bearing upon the reasonableness *per se* of the domestic rates. Defendants assert that the import rates and the transcontinental commodity rates contemporaneously in effect on potato flour were depressed by water competition, and that the domestic class rates were reasonable as applied to this traffic. They submitted various rate comparisons, but with commodities in no way analo-

gous. However, it appears that prior to June 25, 1918, a domestic rate of \$1 was in effect on potato starch from Middle River, a point in California on the Santa Fe 71 miles east of San Francisco, to New York and Chicago. This rate was increased to \$1.25 on June 25, 1918. Other comparisons were submitted by complainants which show that the rates assailed yielded greater car-mile and ton-mile earnings than the rates maintained on certain domestic potato starch traffic for shorter hauls in which some of the defendant carriers participated. For example, there were in effect prior to June 25, 1918, rates of 18 cents from St. Paul, Minn., to Cincinnati, Ohio, a distance of 706 miles, and 26.3 cents from Colfax, Wis., to New York, a distance of 1,277 miles, which rates on the above date became 22.5 and 34.5 cents, respectively. These rates yielded earnings of 5.1 and 4.1 mills per ton-mile prior to June 25, 1918, and 6.4 and 5.4 mills, respectively, on and after that date. On the shipments made by complainants from Seattle to New York, 3,089 miles, and from Seattle to Chicago, 2,185 miles, the applicable rates yielded ton-mile earnings of 12.3 and 16 mills, respectively, prior to June 25, 1918, and 20 mills and 15.4 mills, respectively, on and after that date. The rates from San Francisco yielded similar returns.

The market price of "dempun" during the period of shipment was from 6 cents to 13 cents per pound. Claims for loss and damage are negligible, and the commodity loads heavily, many of the shipments weighing in excess of 80,000 pounds.

Defendants contend that prior to 1918 the movement of potato starch from Pacific groups was not in sufficient volume to warrant the establishment of commodity rates. The evidence shows that 21,860,975 pounds of starch were imported during the year 1918 into the United States from Japan, 18,800,666 pounds in 1917, and 677,422 pounds in 1916.

Counsel for the Director General expressed willingness to pay reparation to the basis of \$1.25, minimum 80,000 pounds. He conceded that the subsequently established domestic rate of \$1.25 from the Pacific coast ports to eastern defined territories apparently was based upon the then existing domestic rate on potato starch from Middle River. He contends, however, that reparation should not be awarded to a lower basis on the shipments which moved prior to June 25, 1918, as the causes which justified the increases made effective on that date existed prior thereto. He cites *Steel Cities Chemical Co. v. Director General*, 56 I. C. C., 723, and *Lake Park Refining Co. v. Director General*, 60 I. C. C., 381. We do not understand the cases cited by the Director General are authority for the broad proposition for which he contends. It would be easy to cite many cases in which the Commission has found certain rates reasonable down



to June 24, 1918, and the same rates plus the increases under general order No. 28 to be reasonable after that date. The extent to which the causes existed prior to June 25, 1918, is but vaguely indicated. This contention overlooks the fact that a shipper is entitled to a reasonable rate and that one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances. Measured by such comparisons the rates applicable to complainants' shipments were unreasonable.

We find that the rates charged were unreasonable to the extent that they exceeded \$1 per 100 pounds prior to June 25, 1918, and \$1.25 on and after that date, subject to a minimum of 50,000 pounds; that the complainants, except Thomas W. Simmons & Company, made the shipments as described and paid and bore the charges thereon; that they were damaged in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

The evidence submitted on behalf of Thomas W. Simmons & Company does not clearly establish that it ultimately paid and bore the freight charges upon the three shipments from Seattle to Chicago upon which it seeks reparation. The attention of the parties is directed to rule IX of the Rules of Practice. Upon receipt of satisfactory proof that this complainant paid and actually bore the freight charges thereon to the amount of the excess herein found to have been unreasonable we will consider the entry of an order awarding reparation to it. No one having any knowledge with respect to the shipment alleged to have been made by the intervener, Takata & Company, appeared at the hearing. Reparation thereon must be denied.

The carriers defendant will be expected to realign their present rates on potato starch and potato flour to conform to our findings herein.

No. 11352.

SIDNEY WANZER &amp; SONS

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY AND DIRECTOR GENERAL, AS AGENT.

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Submitted December 27, 1920. Decided June 16, 1921.

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Minimum charge on shipments of milk and cream from Colgate, Duplainville, Waukesha, and Mukwonago, Wis., to Chicago, Ill., found unreasonable. Reparation awarded.

*Loy N. McIntosh* for complainants.

*H. B. Ramsey* for defendants.

*John F. Finerty* and *E. C. Blanchard* for Director General, as Agent.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## BY DIVISION 3:

Exceptions to the examiner's proposed report were filed by the Director General of Railroads, as Agent.

The complainants are William B. Wanzer and Howard H. Wanzer, copartners dealing in milk at Chicago, Ill., under the trade name of Sidney Wanzer & Sons. By complaint filed March 31, 1920, they allege that the minimum charge of 50 cents collected by defendants on certain shipments of milk and cream from Colgate, Duplainville, Waukesha, and Mukwonago, Wis., to Chicago, during the period from June 25, 1918, to July 19, 1918, was unreasonable. The prayer is for reparation. Rates are stated in cents per 8-gallon can.

The shipments were in 8-gallon cans and moved over the defendant carrier's line. Charges were collected at the applicable rates subject to a minimum charge of 50 cents. These rates were as follows: From Colgate and Duplainville, 34 cents on cream and 27.5 cents on milk; from Waukesha, 34 cents on cream and 26.5 cents on milk; and from Mukwonago, 32.5 cents on cream and 25 cents on milk. They were established June 25, 1918, by the Director General and represented increases of 25 per cent over the rates formerly applicable. The minimum of 50 cents was also established by the Director General on the latter date and represented an increase of 25 cents over the minimum formerly applicable. On July 20, 1918, 62 I. C. C.

the minimum complained of was canceled, leaving no minimum in effect.

Complainants were advised by an agent of the defendant carrier that the minimum complained of was temporary and that refund would be made. This minimum had not been established by other carriers in the same territory.

We find that the charge assailed was unreasonable to the extent that it exceeded the rates contemporaneously applicable. We further find that the shipments were made as described and that complainants paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation in the sum of \$48.61, with interest.

An appropriate order will be entered.

62 I. C. C.

No. 11375.  
MEYERSDALE SMOKELESS COAL COMPANY  
v.  
BALTIMORE & OHIO RAILROAD COMPANY AND  
DIRECTOR GENERAL.

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*Submitted October 13, 1920. Decided June 17, 1921.*

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The refusal of the Baltimore & Ohio Railroad Company from May 1, 1917, to December 23, 1917, and of the Director General of Railroads from December 23, 1917, to August 1, 1918, to furnish, upon reasonable request therefor, cars to complainant at Casselman, Pa., for the transportation of coal during the periods above mentioned, while contemporaneously furnishing cars to other shippers similarly situated for the transportation of the same commodity, found to have been unduly prejudicial to the complainant and its traffic and unduly preferential of complainant's competitors.

*Robert R. Carman and James T. Carter for complainant.*

*William Ainsworth Parker for defendants.*

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS CLARK, AITCHISON, AND POTTER.

BY DIVISION 5:

The issues here presented were made the subject of a proposed report by the examiner. Defendants filed exceptions thereto, to which exceptions complainant replied, and the parties were heard in oral argument.

On May 13, 1919, complainant instituted a suit against the defendants herein in the United States district court for the district of Maryland to recover damages for alleged discrimination resulting from the refusal of the Baltimore & Ohio Railroad Company, hereinafter called the defendant, to furnish cars to complainant at Casselman, Pa., for the transportation of bituminous coal. Casselman is in the Meyersdale district of Pennsylvania and is served by the Connellsville division of the defendant. Hearing was had. Thereafter the parties agreed to submit to this Commission the issue of discrimination; the court to determine the fact and amount of damage. The court consented to this agreement and to a suspension of the suit until we could determine that issue. Accordingly, on April 7, 1920, a complaint was filed alleging that complainant, during the period from May 1, 1917, to August 1, 1918, had been sub-

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jected to undue prejudice, to the undue preference of certain named competitors. Copies of a stipulation of certain facts filed, of the testimony taken, and of certain documentary evidence submitted in the suit accompany the complaint.

In the latter part of March, 1917, complainant acquired a mine located in the Meyersdale district within a few hundred feet of the main line of defendant's Connellsville division. From this mine a siding or sidetrack, owned and used by the Mountain Smokeless Coal Company, operating a mine situated on the property adjoining that of complainant, extended to the Connellsville division. Complainant secured from the Mountain Smokeless Coal Company permission to ship coal over the siding. However, the agreement between that company and defendant provided that use of the siding by any other than the Mountain Smokeless Coal Company should be by permission of the defendant only. Such permission was not obtained by complainant. The defendant had been furnishing cars in the Meyersdale district to more than one mine owner or operator on the same siding, for the shipment of bituminous coal, in instances where such siding was owned and controlled by the defendant or by one mine owner or operator. Complainant was aware that these instances existed when it purchased the mine. It reopened the mine, installed a tipple, and requested the defendant to furnish cars for its shipments on the siding of the Mountain Smokeless Coal Company, but this the defendant refused to do. On April 1, 1917, defendant had issued instructions to its employees charged with the distribution of coal cars to deny applications, thereafter made by persons opening new mines or reopening old mines, for the furnishing of cars at a tipple on a private siding on which there was already another tipple at which coal mined by another mine was being loaded. Although the instructions applied only to applications made after April 1, 1917, the furnishing of cars in two or three instances to two mine owners or operators shipping from the same siding was discontinued. But defendant continued to furnish cars to 10 mine owners or operators on five sidetracks, 2 operators being located on each sidetrack on the Connellsville division. Those operators during the period here considered were and are shippers of bituminous coal over the line of the defendant. Cars for shipment of bituminous coal were supplied thereafter to two persons on a single siding only in the specific instances referred to above. Apparently complainant transported its coal by wagon about 1.25 miles and loaded it on the Western Maryland Railroad, which also serves Casselman. Thereafter it constructed a new and separate siding connecting with the line of defendant, over which coal has been shipped since August 1, 1918.

Many new mines were opened and old mines reopened in the winter of 1916 and shortly thereafter. The demand for cars at that time exceeded the available supply. Defendant prorated its available supply of cars among all persons tendering coal for transportation in accord with car distribution rules. Those rules, although filed with us, were not filed as tariffs. Under these rules the proportion of cars to which each operator was entitled was based upon his past shipments, except that in the case of new or reopened mines a "development allotment" of cars, based on the demands of the mine, was granted until experience showed what proportion of cars such mines were entitled to. But it was found that empty cars furnished a new mine placed on a single siding having two tipples were being loaded by the old mine and marked as having been loaded by the new mine. Other abuses obtained. The furnishing of cars to persons found by defendant to be guilty of such abuses was discontinued.

Complainant contends that, since the unpublished rule of April 1, 1917, changed, affected, and determined the value of the service rendered to it, section 6 of the act to regulate commerce was violated in that the rule was not printed, posted, or filed with us, and did not give the requisite statutory notice of such change as required by that section. However, this contention is not based on any allegation of the complaint and is not here determined.

It was not the general practice of defendant in the Meyersdale district to furnish cars to two shippers on the same private siding, but defendant's witness testified that the seven or eight instances in which it was done had, contrary to the usual practice, "crept in." In one case, at least, the furnishing of cars to two shippers on one siding had continued for approximately seven years. The remoteness of mine sidings and the difficulty of policing the loading of cars impelled the defendant to extend the practice no further. It is agreed that the 10 competitors of complainant receiving cars at five sidings were similarly situated as was complainant with respect to defendant's line and that their operations were conducted under substantially similar circumstances and conditions.

Defendant felt it was unfair to two shippers from one siding, who had invested money in reliance upon the defendant's continuing to furnish them cars and who had not abused the concession, to make the rule of April 1, 1917, apply to them. Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates. *So. Pacific Co. v. Interstate Comm. Comm.*, 219 U. S., 433. Nor will we consider investments by complainant's competitors in mines served by a siding on which two tipples were installed as justifying defendant's

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refusal to furnish cars to complainant under substantially similar circumstances and conditions.

Defendant contends that, as the complainant did not first obtain its permission to be furnished cars on the siding of the Mountain Smokeless Coal Company, in accordance with the siding agreement, the request therefor was not reasonable within the meaning of section 1 of the act. Siding agreements made in respect of the five sidings equipped with two tipples used by complainant's competitors were the same as that of the Mountain Smokeless Coal Company and the defendant permitted cars to be furnished at such sidings. Under these circumstances we find that complainant's specific request for cars met the requirements of the act.

We find that the refusal of defendant, Baltimore & Ohio Railroad, during the period from May 1, 1917, to December 28, 1917, and of the Director General of Railroads from December 28, 1917, to August 1, 1918, to furnish complainant with cars for the interstate transportation of bituminous coal, while contemporaneously furnishing the other mine owners and operators, competitors of complainant and similarly located on private sidings on which two tipples were maintained, cars for the transportation of the same commodity, subjected complainant and its traffic to undue prejudice and disadvantage to the undue preference and advantage of such competitors in violation of section 3 of the act to regulate commerce and of the federal control act. No order is necessary.

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No. 10903.

OKLAHOMA STATE SHIPPERS' ASSOCIATION ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA  
& SANTA FE RAILWAY COMPANY, ET AL.

*Submitted November 19, 1920. Decided June 23, 1921.*

1. Rates on canned goods, in carloads, from Colorado points to destinations in Oklahoma found not unreasonable but unduly prejudicial. Relationship prescribed between rates to Oklahoma and Kansas destinations. Reparation denied.
2. Rates on canned condensed milk and canned pickles found neither unreasonable nor unduly prejudicial.

*H. C. McCord* for complainants.

*S. W. Hayes, T. J. Norton, and F. E. Andrews* for defendants.

*E. N. Adams* for Tulsa Traffic Association, Ratcliff-Sanders Company, and Muskogee Wholesale Grocery Company; and *H. D. Driscoll* for Oklahoma Traffic Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, POTTER, AND ESCH.

POTTER, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by defendants.

The principal complainant herein, the Oklahoma State Shippers' Association, is a voluntary organization of shippers in Oklahoma. The other complainants are engaged in the wholesale grocery business at various points in Oklahoma. By complaint filed September 20, 1919, it is alleged that the rates maintained by defendants for the transportation of canned fruits, vegetables, and other commodities, in carloads, from producing points in Colorado to all points in Oklahoma were, prior to June 25, 1918, and that the present rates are, unreasonable and unduly prejudicial. Complainants seek the establishment of reasonable and nonprejudicial rates and ask for reparation. Petitions of intervention were filed by the Tulsa Traffic Association of Tulsa, Okla., the Ratcliff-Sanders Company of Vinita, Okla., the Muskogee Wholesale Grocery Company of Muskogee, Okla., and the Oklahoma Traffic Association, a voluntary organization of dealers located in Oklahoma City.



The commodities involved in the complaint, with the exception of pickles and in most cases condensed milk, are included in the published tariffs under the heading canned goods, and this term will be understood to include canned vegetables, fruits, soup, hominy, pork and beans, sauer kraut, jam, preserves, catsup, oyster cocktails, chili sauce, and such other articles, except as above noted, as are listed under the heading of canned goods in the tariffs applying between the territories involved. Rates are stated herein in cents per 100 pounds, and, unless otherwise indicated, are those in effect immediately after the 25 per cent increase under general order No. 28 of the Director General of Railroads.

The rates on canned goods are on a blanket basis, both as to points of origin and destination. The principal producing points are Greeley, Longmont, Loveland, Crowley, Canon City, Rocky Ford, Denver, Brighton, and Lupton, which are located in irrigation districts in Colorado, extending northward from Denver and in the Arkansas River Valley east of and including Canon City. From this territory a rate of 44 cents is maintained to all points in the state of Kansas; to points on the Missouri River, Omaha to Kansas City, both inclusive; and to points in the extreme western part of Missouri as far south as Joplin. This will be referred to as the Kansas group. The state of Oklahoma constitutes another group, to which there is published a rate of 62.5 cents. The state of Texas takes a 64-cent rate. To St. Paul, Minn., Chicago, Ill., Memphis, Tenn., New Orleans, La., and practically the whole state of Arkansas, there is published a rate of 69 cents. This will be spoken of as the Chicago-New Orleans group. To points just east of the Kansas group rates are based on the Missouri River combination, with St. Louis rates as maxima. St. Louis and the Mississippi River crossings north thereof, together with the eastern part of Missouri, and a portion of Iowa, are accorded a rate of 62.5 cents, the same as Oklahoma. This territory will be referred to as the St. Louis group.

Exhibits submitted by the complainants, with certain additions from the record, show the average distance and the average revenue per ton-mile from Denver, as a representative point of origin, to the above groups as follows:

Denver to—	Average distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Kansas group.....	620	44	14.3
Oklahoma group.....	736	62.5	16.9
Texas group.....	803	64	14.3
St. Louis group.....	836	62.5	15
Chicago-New Orleans group.....	1,000	69	12.6

To the points in the Texas group selected by the complainants, we have added El Paso in the western part of that state. The average to the St. Louis group is based on distances to Burlington, Iowa, and Hannibal, Jefferson City, Springfield, and St. Louis, Mo. The only distance as to which there is serious dispute is that to the Kansas group. By selecting three sets of representative Kansas points, varying in number from 6 to 17, defendants obtain distances of 517, 485, and 521 miles, respectively. However, the average distance obtained by complainant is based on all destinations which take the 44-cent rate and at which wholesale grocers are located, including certain destinations in western Missouri as well as those in Kansas.

Complainants contend that they should have a rate from Colorado points which will yield no greater ton-mile earnings than do the rates in effect to Kansas and Texas.

It is stated for defendants that the rate of 44 cents to the Kansas group is unreasonably low and that the Colorado-Oklahoma rate should not be predicated thereon. Originally the eastbound rates from Colorado producing points were on the fifth-class basis of 50 cents to the Missouri River, and 47 cents to jobbing points in the interior of Kansas. When one of the canning factories in Colorado was unable to dispose of a surplus stock of canned peas a rate of 35 cents was established to the Missouri River and carried as maximum to intermediate points. The canning industry in Colorado grew and extended, resulting in the factories often having a stock on hand which they could not advantageously dispose of in the territory available under the rates in effect. The result was the extension of the 35-cent rate to the entire movement of canned goods. The reduction of the rate on canned goods permitted the Colorado canneries to reach the Missouri River in competition with producing points in Nebraska, Iowa, Missouri, and Arkansas. Under general order No. 28 the rate was advanced to 44 cents.

Complainant contends that the rates from Colorado points to the Missouri River are on a proper basis; that the Colorado-Kansas adjustment is sufficiently high; and that the Colorado-Oklahoma rates should be adjusted in harmony therewith. The rate on canned goods to certain Kansas points is 75 per cent of the fifth-class rate of 59 cents, whereas the rate to Oklahoma points is only 70 per cent of the fifth-class rate of 87.5 cents, but the record indicates that no definite relationship between rates on canned goods and fifth-class rates has been established from Colorado to Kansas, Oklahoma, and Texas destinations.

Defendants compare the rates in effect from Nebraska City, Nebr., Cedar Rapids, Iowa, Springfield, Mo., and Rogers, Ark., to Kansas

City and Joplin, Mo., and a few representative points in Kansas, with rates from Denver to the same destinations. The rates from Cedar Rapids and Nebraska City to interior Kansas points are generally higher than from Denver to the same destinations, although the distance is in most cases greater from Denver; and from the Springfield district, which seems to be the principal source of competition with the Colorado points to interior Kansas, the rates shown to four Kansas destinations range from 22 cents to 32 cents, for distances of from 155 miles to 315 miles, while from Denver to the same destinations the rate is 44 cents and the distances from 488 miles to 654 miles.

Defendants submit a comparison of the rates in effect from St. Louis, Mo., Sioux City, Iowa, Marshalltown, Iowa, Columbia, Tenn., Hoopeston, Ill., Bentonville, Ark., and Galveston, Tex., to representative destinations in Oklahoma, which, from the standpoint of ton-mile revenue, supports their contention that the rate from Colorado to Kansas points is on a subnormal basis and that the present Colorado-Oklahoma rates are not unduly high. The actual movement to Oklahoma upon these rates was not developed, but defendants made the statement that in prior years there had been a greater movement of commodities taking canned-goods rates from eastern seaboard territory into Oklahoma than from any other source. It was also stated that many brands of canned goods move regardless of the rate. Defendants cite *Montrose & Delta Counties Freight Rate Asso. v. R. R. Co.*, 34 I. C. C., 393, wherein we refused to declare unreasonable a rate of 63 cents on canned goods from St. Louis to Pueblo, Colo., a distance of 870 miles, and they refer to rates on canned goods to Denver of 67 cents from Chicago, 63 cents from St. Louis, and 50 cents from Kansas City, fixed as reasonable in *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 544. These rates do not include the 25 per cent increase under general order No. 28.

Complainants show that jobbers throughout the northern half of Oklahoma compete with difficulty with Kansas jobbers located at Coffeyville, Arkansas City, Wichita, Anthony, and other southern Kansas points. With a rate 18.5 cents higher than that paid by the Kansas dealers from Colorado points and with local rates on practically a parity, the Oklahoma merchants necessarily are at a disadvantage in meeting Kansas competition in common territory.

From Green Bay, Wis., to seven representative points in the Kansas group, the average rate is 48.5 cents for an average distance of 790 miles, producing a ton-mile revenue of 12.3 mills; to seven representative points in Oklahoma the average distance is 979 miles, the average rate 61 cents, and the ton-mile revenue 12.5

mills; and from the same point to Texas common-point territory the average distance is 1,288 miles, the average rate 82.5 cents, and the ton-mile earnings 12.8 mills. The average Green Bay-Oklahoma distance is 124 per cent of the Green Bay-Kansas distance, and the average rate to Oklahoma 125 per cent of the rate to Kansas. Contrasted with this, the Colorado-Oklahoma distance is 119 per cent of the Colorado-Kansas distance, while the rate to Oklahoma is 142 per cent of the rate to Kansas. The percentages shown in connection with the Green Bay adjustment also hold true with respect to rates from that point to destinations in Texas. The Colorado-Texas average distance is 144 per cent of the distance from Colorado to Kansas, and the rate is 145 per cent of the Colorado-Kansas rate.

From Colorado to points in Kansas condensed milk is on the full fifth-class basis, taking a rate of 50 cents to the Missouri River and to points in the southern part of Kansas. Ordinarily, condensed or evaporated milk is accorded the same rates that are published on canned goods, but a departure was made with respect to Kansas for the reason, as explained by the defendants, that "the market competition was entirely dissimilar, and the commodity rates on canned goods were subnormal." To all points in Oklahoma a commodity rate of 62.5 cents applies, the same as the rate on canned goods. The record affords no basis for a finding that the rate on condensed milk from Colorado producing points to Oklahoma destinations is either unreasonable or unduly prejudicial.

A commodity rate of 72.5 cents applies on pickles from Colorado points to Oklahoma points, whereas to points in the Kansas group, including Missouri River cities and points in southern Kansas, such as Anthony, Arkansas City, and Coffeyville the fifth-class rate of 59 cents applies. The fifth-class rate to the majority of Oklahoma points is 87.5 cents. With respect to this traffic the complainants ask for the establishment of the same rates that are maintained on canned goods. Their contentions are based on the ground of analogy both from a transportation standpoint and of value. It is stated that ordinarily pickles have a lower average value than canned goods; that about one-third of this traffic is shipped in bulk in barrels; that straight carloads of pickles load as heavily as mixed carloads of canned goods which include preserves, but not as heavily as straight carloads of canned goods; and that damage claims thereon are not greater than on mixed carloads of canned goods which include preserves. Complainants offered an exhibit comparing rates on canned goods and on pickles from and to various points. Of 29 situations set forth, exclusive of the Colorado-

Oklahoma adjustment, embracing rates from St. Louis and Chicago to Oklahoma points, Kansas City to Texas points, seaboard points to Oklahoma, Burlington, Ia., to Aberdeen, S. Dak., Buffalo, N. Y., to Abbeyville, S. C., etc., 14 show rates on pickles ranging from 1 to 9 cents higher than the rates on canned goods, 2 instances where the rates on pickles are lower, and 13 situations where the rates are the same. In official and western classification territories pickles are rated fifth class, the same as canned goods; in southern classification territory pickles are rated sixth class, or one class lower than canned goods. Exhibits setting forth actual movements of canned goods and pickles from Colorado show that the average load per car of the former was 66,900 pounds, with an average revenue per car of \$418, whereas the average load per car for pickles was 40,774 pounds, with an average per car revenue of \$298. The average ton-mile revenue under the present rate from Colorado to Oklahoma is substantially similar to that under the 59-cent rate to the competitive points in southern Kansas. Ton-mile revenues under the existing rate do not compare unfavorably with those under rates from other points to destinations in Kansas and Oklahoma, as well as to other destination points involving approximately the same haul.

We find that the rates on canned condensed milk and pickles, in carloads, from Colorado producing points to Oklahoma were not and are not unreasonable or unduly prejudicial; and that the rates on other canned goods, in carloads, from and to the same points were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to complainants to the extent that they are upon a substantially higher basis, distance considered, than the rates contemporaneously maintained on similar traffic to Kansas points; in other words, the ton-mile earnings under the rates to Kansas and Oklahoma should be substantially equal. Since the hearing in this case we have decided *Increased Rates, 1920*, 58 I. C. C., 220, authorizing certain increases in rates. Pursuant to the authority granted in that case, the rates on canned goods from Colorado producing points to Kansas and Oklahoma have been increased to 59.5 cents and 84.5 cents, respectively. The 59.5-cent rate to Kansas points for the average distance of 620 miles shown in the table set forth above yields ton-mile earnings of 19.2 mills. A rate of 70.5 cents for the average distance to the Oklahoma points of 736 miles, shown in the same table, would yield ton-mile earnings of 19.15 mills.

We therefore find, upon a consideration of the report in *Increased Rates, 1920, supra*, and the increases in rates on the traffic here under consideration made pursuant to authority therein granted, that in order to establish the substantial equality, distance considered, in

rates to Oklahoma and Kansas, necessary to remove the undue prejudice herein found to exist, the rates to Oklahoma should not exceed the contemporaneous rates to Kansas by more than 11 cents, and that relationship will be prescribed for the future.

There is no proof of damage such as is required to support an award of reparation under the finding of undue prejudice, and therefore reparation is denied.

An appropriate order will be entered.

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No. 11916.

**KANSAS RATES, FARES, AND CHARGES.**  
**IN THE MATTER OF INTRASTATE RATES, FARES, AND**  
**CHARGES IN THE STATE OF KANSAS.**

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*Submitted April 23, 1921. Decided July 6, 1921.*

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Subject to the exceptions stated in the report, intrastate rates, fares, and charges required by the Court of Industrial Relations of the state of Kansas found to subject interstate traffic, and persons and localities outside of the state, to undue prejudice and disadvantage and to constitute an unjust discrimination against interstate commerce.

*Alfred P. Thom, Fred H. Wood, R. W. Blair, Henry A. Scandrett, W. P. Waggener, W. F. Dickinson, Luther Burns, W. F. Evans, R. R. Vermilion, J. M. Bryson, C. S. Burg, W. W. Brown, F. H. Moore, C. Histed, E. A. Boyd, Bruce Scott, Kenneth F. Burgess, Byron Clark, Samuel W. Sawyer, David Ritchie, D. R. Lincoln, W. J. Black, B. M. Bukey, L. E. Wettling, Gardiner Lathrop, T. J. Norton, William R. Smith, and James L. Coleman for steam carriers; Chester I. Long for Arkansas Valley Interurban Railway Company; and Clyde Taylor for Joplin & Pittsburg Railway Company.*

*Clyde M. Reed, A. E. Helm, and P. A. Conway for Court of Industrial Relations of the state of Kansas.*

*Clifford Thorne for Western Petroleum Refiners' Association, Kansas Cooperative Grain Dealers Association, and National Live Stock Shippers' League; B. L. Glover for Iola Cement Mills Traffic Association; W. P. Huston for Wichita Board of Commerce; E. H. Hogueland for Kaw River Sand & Material Company, Muncie Sand Company, and Stewart Sand Company; J. J. Campbell for Pittsburg & Midway Coal Company, Clemmons Coal Company, Sheridan Coal Company, Domestic Fuel Company, Perry Coal Company, United States Coal Company, Western Coal & Mining Company, and Weir Coal Company; C. E. Warner for Southwestern Interstate Coal Operators' Association; and A. F. Winn for Midland Refining Company.*

**REPORT OF THE COMMISSION.**

**McCHORD, Commissioner:**

This proceeding presents the question whether the rates, fares, and charges which the Court of Industrial Relations of the state of Kan-

sas has required for intrastate traffic of railroads subject to our jurisdiction in that state are lawful in their relation to the rates, fares, and charges of the same carriers applicable to interstate commerce.

In *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to together as Ex Parte 74, this Commission, under authority conferred upon it by the interstate commerce act, divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific. These groups, in our view, represented a proper division of the country for the purposes of considering the financial condition of the carriers and fixing upon general increases in rates. We found that for freight services the carriers might increase their charges by various percentages according to the several groups. In the western group, which includes Kansas, an increase of 35 per cent was authorized. For passenger service, including the transportation of excess baggage and for the transportation of milk and cream, we authorized a uniform increase of 20 per cent in fares and charges throughout the country and authorized a surcharge on passengers in sleeping and parlor cars equal to 50 per cent of the charge for space in those cars, to accrue to the rail carriers. It was our conclusion that these various increases would result in transportation charges—

not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

In reaching this conclusion, we anticipated that the various state authorities would grant corresponding increases, as most of them have since done. Tariffs were filed establishing these increases in interstate rates, fares, and charges effective, generally, August 26, 1920.

The carriers in Kansas at that time had pending before the Court of Industrial Relations an application for like increases in their intrastate rates, fares, and charges. The court by its decision, rendered October 9, 1920, denied the increases sought, but granted the surcharge on passengers in sleeping or parlor cars. It did, however, permit an increase of 30 per cent in the charges for freight services, except as to petroleum, crude, fuel, road, and gas oils, petroleum asphalt, and petroleum wax tailings, on which no increases were permitted; and except that on brick and articles basing thereon, the maximum increase was to be 1 cent per 100 pounds; on cement and articles basing thereon, 2 cents per 100 pounds; on crushed stone,



sand, gravel, and articles basing thereon, 0.5 cent per 100 pounds; and on coal:

Where rate was not above \$1.00 per ton, 15 cents per net ton.  
Where rate was \$1.01 to \$1.50 per ton, 20 cents per net ton.  
Where rate was \$1.51 to \$2.00 per ton, 25 cents per net ton.  
Where rate was \$2.01 to \$2.50 per ton, 30 cents per net ton.  
Where rate was \$2.51 to \$3.00 per ton, 35 cents per net ton.  
Where rate was \$3.01 or higher, 40 cents per net ton.

The increases that were permitted were generally made effective October 23, 1920. They were allowed as temporary increases, to stand until April 21, 1921, but at the conclusion of the hearing in this case the Court of Industrial Relations, upon application of the carriers and to avoid legal complications, extended the period to July 21, 1921.

As their application was not granted in full, the principal steam railroads of Kansas subject to our jurisdiction complained to us by petition, whereupon we instituted this proceeding, bringing in all Kansas common carriers that were subject to the interstate commerce act. Evidence was offered on behalf of the following steam roads: Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railroad Company; Chicago, Burlington & Quincy Railroad Company; Kansas City, Mexico & Orient Railway Company and William T. Kemper, its receiver; Kansas City Southern Railway Company; Kansas City Terminal Railway Company; Midland Valley Railway Company; Missouri, Kansas & Texas Railway Company and C. E. Schaff, its receiver; Missouri Pacific Railroad Company; St. Joseph & Grand Island Railway Company; St. Louis-San Francisco Railway Company; Salina Northern Railroad Company and H. C. Brent and P. W. Goble, its receivers; and Union Pacific Railroad Company. The only electrically operated lines which offered evidence were the Arkansas Valley Interurban Railway Company and the Joplin & Pittsburg Railway Company. We shall deal first with the steam carriers' case.

The steam carriers and the Court of Industrial Relations estimate that on a year's business the revenues of the steam carriers from intrastate traffic in Kansas would be considerably over \$3,000,000 less than if the increases authorized by us for interstate commerce were applied intrastate. This amount is called a loss by the carriers, but the Court of Industrial Relations has treated it as a saving to Kansas intrastate shippers.

Except for transcontinental fares, which for special reasons are lower, the interstate fares of the respondent steam carriers are on the general basis of 3.6 cents per mile, while the Kansas intrastate basis required by the Court of Industrial Relations is 8 cents per

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mile. The record establishes that the interstate fares are being defeated, especially those to and from large cities, such as Kansas City, Mo.; and that interstate commerce is interfered with and reduced in volume by passengers purchasing tickets to points near the state borders, there buying new tickets and immediately resuming their journey on the same train, or using some other conveyance to their intended final destination. It is shown, for instance, that there has been a substantial increase in the traffic between Kansas City, Kans., and Kansas points, and a substantial decrease in the traffic between Kansas City, Mo., and Kansas points. There are strong indications that this is due to the lower intrastate fares. Passengers can use street cars or other means of conveyance between Kansas City, Mo., and Kansas City, Kans., and thus defeat the through fares to and from almost any point in Kansas. On long hauls the saving that can be effected by a passenger is very substantial. The discriminatory effects of practices of the kind above referred to are considered in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350; *Wisconsin Passenger Fares*, 59 I. C. C., 391; *Ohio Rates, Fares, and Charges*, 60 I. C. C., 78; and similar recent cases.

The service and accommodations afforded interstate and intrastate passengers generally are the same, and there is no substantial difference in the circumstances and conditions under which the transportation is performed. There is commercial rivalry between points in Kansas and points outside the state, and the 20 per cent difference in fares gives an advantage to localities and business interests in Kansas and to persons who travel to and from points within the state. Some routes between given points in Kansas are intrastate and some are interstate. The fares via the intrastate routes are on the general basis of 3 cents per mile, while those via the interstate routes are on the basis of 3.6 cents per mile. This difference has the effect of diverting traffic from the interstate to intrastate routes.

Jobbers and other shippers at Kansas City and St. Joseph, Mo., on the east bank of the Missouri River, distribute throughout Kansas and are in keen competition with shippers at numerous points in that state. Among the Kansas distributing points are Atchison, Leavenworth, and Kansas City, Kans., on the west bank of the Missouri River, which points, as to traffic moving into Kansas, were for many years prior to August 26, 1920, kept on a rate parity with Kansas City and St. Joseph, Mo., but as a result of the refusal of the Court of Industrial Relations to grant increases intrastate corresponding to those we authorized interstate, this long-standing parity has been destroyed, and the cities on the west bank of the river are accorded a preference. Lawrence and Topeka, in interior

Kansas, for years had rates to points throughout the state which were based on differentials under the rates from the Missouri River cities, but since the Ex Parte 74 increases have been applied interstate, without corresponding increases intrastate, the differences in favor of Lawrence and Topeka have been increased, to the detriment of Kansas City and St. Joseph, Mo. The relationships that had existed as between all Kansas distributing points, on the one hand, and Kansas City and St. Joseph, Mo., on the other, were changed, to the advantage of the Kansas cities.

Some routes from and to given points are interstate and some intrastate. The latter are maintaining lower rates because of the order of the Court of Industrial Relations, and are handling traffic that would otherwise move via interstate routes. For instance, from Salyards, Kans., a local station on the Missouri Pacific, crude oil is moving to Kansas City, Kans., via the intrastate route of the Missouri Pacific to Eureka, the Atchison, Topeka & Santa Fe to Atchison, and the Missouri Pacific again beyond, a distance of 218 miles. The Missouri Pacific has an interstate route of its own between the same points involving a haul of only 171 miles. The traffic is being sent by the shippers over the longer route intrastate because the rate is lower, thus destroying the interstate traffic.

Large quantities of sand are produced near Kansas City, Mo., and Kansas City and Topeka, Kans. Formerly the various producing points were kept on a rate parity, not only for commercial reasons, but because the service was substantially the same with respect to each point of origin, but as the interstate rates were increased 85 per cent following Ex Parte 74, and the intrastate rates only 0.5 cent per 100 pounds as a maximum, intrastate traffic from this producing district has had an advantage of from 0.5 cent to 2 cents per 100 pounds, or from about \$5 to \$20 per car over interstate traffic to common markets in Kansas. The sand is sold delivered, the competition is keen, and a rate difference of 0.5 cent per 100 pounds is sufficient to give the favored shipper a monopoly. Numerous instances are shown in which the traffic is diverted from interstate to intrastate routes, as explained in the next preceding paragraph.

One of the most serious instances of disparity is found in the coal-rate situation. Coal is produced in southwestern Missouri and southeastern Kansas. The entire producing region is practically one coal field. Some years ago there was a slight differential in favor of the Kansas mines, which, in 1915, was increased by the failure of the Kansas authorities to grant the same increases as we had granted, but since June 25, 1918, the mines on both sides of the state line have been treated as a unit from a rate standpoint; that is, to a given point in Kansas the same rate applied from Kansas mines as from Mis-

souri mines; but since the effective date of the increases made following Ex Parte 74 the Kansas operators have had a rate advantage ranging from 12.5 cents to 75 cents per ton, dependent upon the destination. The Missouri operators compete with the Kansas operators in selling in Kansas, and the disparities are costing one Missouri operator alone about \$800 per day.

The evidence of the carriers as to the creation and widening of rate differences in favor of intrastate traffic in general is very comprehensive and, according to their witness, covers most of the intrastate business, embracing, in addition to the commodities already mentioned, live stock, grain, grain products, hay, salt, sugar, sirup, beans, coffee, canned goods, brick, cement, etc. Competition between markets within the state and markets without the state is also dealt with. In most respects the evidence is similar to, and fully as complete as, that offered in *Nebraska Rates, Fares, and Charges*, 60 I. C. C., 305, where we required the Nebraska rates, fares, and charges to be increased to the same extent as the interstate rates, fares, and charges in the western group were increased following Ex Parte 74. It is not necessary to set it forth in detail. Suffice it to say that the unwholesome situation disclosed is general, and any changes made for its correction would, as a practical matter, have to be general.

As to the whole body of intrastate rates, the carriers assume that the rates in effect prior to the Ex Parte 74 increases were properly related to the interstate rates. They contend, particularly in view of the basis on which our rate finding in Ex Parte 74 rests, that intrastate traffic is not contributing in fair proportion to their revenues.

Kansas intrastate traffic traverses the same lines of railroad as does interstate traffic. All lines handle both state and interstate business on the same rails. The same kind of service and the same kind of railroad conditions prevail within Kansas as between Kansas and Nebraska, for instance, or between Kansas and Missouri or Kansas and Oklahoma. Generally speaking, there is no difference between the intrastate and the interstate transportation conditions in any service, freight or passenger.

The Court of Industrial Relations calls attention to the fact that the intrastate class rates between most points in Kansas, except from jobbing points, are based on the Kansas mileage scale, and that the rates are relatively higher than the specific rates from Kansas City and St. Joseph, Mo., to points in Kansas. The Kansas mileage rates were not designed to meet special conditions that may obtain with respect to any particular haul or set of hauls, but with the situation as a whole in mind, and apparently for that reason are higher than the specific rates, just as class rates are for general application and

are higher than commodity rates made to meet special circumstances and conditions. They are used only on a relatively small proportion of the traffic. The rates that move most of the intrastate class-rate tonnage are those from the jobbing points, and except for the difference of 5 per cent in favor of the intrastate rates, due to the 30 per cent increase intrastate as compared with the 35 per cent increase interstate, the class rates from jobbing points in Kansas are on practically the same basis as the rates from Kansas City and St. Joseph, Mo., to Kansas points. In a few instances there is a slight difference in favor of the interstate rates, due to the fact that the distance via the Atchison, Topeka & Santa Fe between Kansas City, Mo., and Topeka was, several years ago, increased 1 mile by a relocation of the track, and no increase made in the interstate rates to Topeka to reflect the increased distance. This, however, is a matter that can be easily corrected if wrong.

It was also developed by the Court of Industrial Relations that there are practically no joint class rates in Kansas, nor from Kansas City or St. Joseph, Mo., into Kansas. As most of the roads in Kansas reach Kansas City and St. Joseph, Mo., with their own power, jobbers at those points can reach almost all points in the state by a one-line haul; that is, they can deliver their traffic to the road which reaches the destination to which they desire to ship, but as all roads in Kansas do not serve all distributing points in the state, jobbers who ship to a destination on a road which does not serve the point where they are located must pay the combination of locals. These combinations are much higher than the single-line rates for equal distances from Kansas City and St. Joseph, Mo., and, incidentally, much higher than the joint rates for equal distances within Missouri. It also appears that there are a few Kansas roads which do not reach these Missouri River cities; for instance, the Kansas City, Mexico & Orient Railway, which runs southwest from Wichita, Kans. Joint rates substantially lower than the combinations of locals apply from Kansas City, Mo., to points on this road, but if a jobber at Hutchinson, Kans., for instance, desires to reach a point on the Kansas City, Mexico & Orient he must pay the combinations of locals. The foregoing situation is not peculiar to Kansas. It is not substantially different from that which obtains interstate between Kansas and Nebraska and intrastate in Nebraska. It is often difficult to find any justification for the combination of local rates; see *Intermediate Rate Asso. v. Director General*, 61 I. C. C., 226, 246, but this situation has been countenanced by the Kansas state authorities for years, and the establishment of joint rates is not an issue in this case.

Many rates on live stock from Kansas points are relatively higher to Wichita, Kans., than to Kansas City, Mo. For instance, for a

61-mile haul the rate on horses to Wichita is \$37.50 per car, while Kansas City pays \$31.50 for a haul of similar length. The rates to Kansas City are specific rates, while those to Wichita are based on the intrastate mileage scale, which has general application. On lumber, Wichita pays 29.5 cents for an intrastate haul of 250 miles. Kansas City, Mo., can ship that distance into Kansas on a specific rate of 24.5 cents. On broom corn, which it draws from points in Kansas, Wichita must generally, except for short hauls, pay the same rate from a given point as Kansas City, Mo., although the distance to the latter point is much greater. This is due to the fact that there are specific commodity rates from the producing points to Kansas City, while the general intrastate mileage scale, providing rates relatively higher, applies to Wichita, but the mileage rate to Wichita is not used where it exceeds the specific rate to Kansas City. It is noted that on broom corn from Elkhart, Kans., for instance, the rate to Kansas City and Wichita is 59.5 cents per 100 pounds. The distance from Elkhart to Wichita is 300 miles, and to Kansas City 459 miles. Wichita is the largest broom-corn market in the world. About 90 per cent of the tonnage goes into storage and is later shipped out on the basis of the through rates from point of origin to final destination.

Included in the criticisms made by the Court of Industrial Relations are the rates on grain from Collyer, Kans., to Kansas City, Kans., versus the rates to Chicago, Ill. To Kansas City, Kans., 334 miles, the rate is 23.5 cents and the earnings per ton-mile 14 mills. To Chicago, 792 miles, the rate is 44 cents and the earnings 11.1 mills per ton-mile. The distance to Chicago is 237 per cent of that to Kansas City, Kans., whereas the rate to Chicago is 187 per cent of the rate to Kansas City, Kans. It is pointed out that if the ton-mile earnings on the intrastate rate remained constant for application to the interstate haul, the rate to Chicago would be 56 cents. On salt from Hutchinson to Phillipsburg, Kans., 322 miles, the rate is 23.5 cents, yielding 14.6 mills per ton-mile, while from Hutchinson to Centaur, Mo., 489 miles, the rate is only 3 cents higher, or 26.5 cents, yielding slightly over 10.8 mills per ton per mile. The interstate haul is 152 per cent of the intrastate haul, but the interstate rate is 104 per cent of the intrastate rate. On coal from Pittsburg to Hutchinson, Kans., 216 miles, there is an intrastate rate of \$2.40 per ton, yielding 11.1 mills per ton-mile, which is cited in comparison with a rate of \$2.16 per ton from Henrietta, Okla., to Neodesha, Kans., 230 miles, yielding 9.4 mills per ton-mile. A rate of \$1.85 per ton on coal for a haul of 185 miles from Springfield to Chicago, Ill., yielding 10 mills per ton-mile, is compared with the rate of \$2.05 per ton for a haul of similar length from Pittsburg to Wichita,

Kans., yielding 10.7 mills per ton-mile. Several instances are shown in which there are less-than-carload commodity rates from Kansas City, Mo., to points in Kansas on sugar, coffee, canned goods, beans, and sirup, from 1.5 to 3.5 cents lower than for equal distances in Kansas.

Many other instances were shown by the Court of Industrial Relations where the rates are relatively higher intrastate than interstate, the differences evidently being due to various causes, such as the relocation of the line of the Atchison, Topeka & Santa Fe, as explained above, the application of rates to and from groups, the recognition of differences in traffic and transportation conditions, and the desirability of adjusting rates to meet competition, commercial needs, etc. The parties actually interested in the rates would, no doubt, strongly oppose the making of all rates on a so-called scientific basis. As we understand it, these inconsistencies are referred to by the Court of Industrial Relations, not with the idea that we should here correct them, but as reasons why we should not supplant the general increase of 30 per cent in Kansas with one of 35 per cent. The inconsistencies that are pointed out are not new developments, but are matters of long standing.

The Court of Industrial Relations offered some data to the effect that the increases authorized by us for the western group in Ex Parte 74 were excessive. It is not deemed necessary to set forth this evidence. After the decision in Ex Parte 74, the Court of Industrial Relations petitioned us for a reopening of that case, on the ground that we had erred as to the western group, but the petition was denied.

The Court of Industrial Relations argues that there is reason for a lesser percentage increase intrastate in Kansas than in the western group. This contention is answered in *Intrastate Rates within Illinois*, 59 I. C. C., 350, 364, and in *Nebraska Rates, Fares, and Charges, supra*, wherein we considered the right of a state to create a rate group of its own in addition to those fixed by us in Ex Parte 74.

#### CEMENT.

In *Western Cement Rates*, 48 I. C. C., 201, we prescribed reasonable maximum distance scales for the interstate movement of cement in carloads between points in western trunk line territory and between points in adjacent territories and western trunk line territory. There were four scales. Generally speaking, scale I was prescribed for Illinois; scale II for Wisconsin, southern Minnesota, Iowa, and Missouri north of the Missouri River; scale III for the territory west of the Missouri River in eastern South Dakota, eastern Ne-

braska, and the eastern half of Kansas; and scale IV for application west of scale-III territory as far as Colorado common points. Scale I was lowest; scale II was higher than scale I; scale III higher than scale II; and scale IV higher than scale III. For movements between these groups or territories the rates were to be based on an average of the rates applicable in the groups or territories traversed. In a supplemental report in the case cited, 52 I. C. C., 225, we consolidated scale-I and scale-II territories and provided for the application of scale-II rates in both territories. The scales referred to are the bases of the present interstate rates, the rates prescribed having been increased 2 cents per 100 pounds under general order No. 28 and later 35 per cent following Ex Parte 74. The Court of Industrial Relations, as previously stated, granted a 30 per cent increase, subject to a maximum increase of 2 cents per 100 pounds. For the longer distances, of course, there was considerably less than a 30 per cent increase. For instance, a 15-cent rate under our decision would have been increased to 20 cents, whereas under the order of the Court of Industrial Relations it became 17 cents. The Iola Cement Mills Traffic Association, representing cement manufacturers in southeastern Kansas, appeared in this case for the purpose of resisting the further increases sought by the carriers. It desires a continuance of the present Kansas intrastate rates, or, in lieu thereof, if it may be sought in this case, that the present scale-II rates be extended west and applied intrastate in practically all that portion of the state of Kansas which is now covered interstate by scale III. For western Kansas a composite scale based on scales II, III, and IV is suggested. It should be here stated that the Iola Cement Mills Traffic Association and the Lincoln Chamber of Commerce recently filed with us a petition asking that *Western Cement Rates, supra*, be reopened for the purpose of considering the extension of scale II to eastern Kansas, southwestern Missouri, and eastern Nebraska, not including Superior, Nebr. The petition has been granted.

The Iola mills, though in scale-III territory, enjoy scale-II rates into scale-II territory; and their competitors in scale-II territory carry an average of scale-II and scale-III rates into Kansas, whereas the Iola mills carry interstate scale-III rates westbound. It is largely on these grounds that the cement interests seek the scale-II rates for scale-III territory in eastern Kansas. In many instances the Kansas intrastate rates at present in effect—that is, without the increases sought by the carriers in this case—are for equal distances as high as, or higher than, the interstate rates to, from, and through the state; and if the increases sought are made, the Kansas mills as to intrastate traffic will, of course, be at a still greater disadvantage.



If the intrastate rates are increased to the extent sought by the carriers, many intrastate rates will exceed the interstate rates, even between the same points in Kansas. The interstate rates applicable between points within the state of Kansas via intrastate routes are nothing more nor less than proportional rates. However, in this connection we may call attention to the amended orders in several intrastate cases that have been before us, which provide that no carrier is required to maintain a higher intrastate rate than its corresponding interstate rate.

The increases sought by the carriers would also create new departures from the long-and-short-haul rule and increase the extent of existing departures. From the Iola district in southeastern Kansas to Omaha, Nebr., the rate is 17.5 cents. The present rate to Shroyer, Kans., which is intermediate to Omaha, is 15.5 cents. The rate sought by the carriers to Shroyer is 18 cents. Similarly, to Fortescue, Mo., the rate from the Iola district is 15.5 cents, while to White Cloud, Kans., an intermediate point, the rate is 18.5 cents. The rate sought by the carriers to White Cloud is 19.5 cents. Scale II would avoid these situations. With an order in this case conforming to the amended orders in previous cases—that is, providing that a carrier is not required to maintain any higher intrastate rate than the interstate rate applicable via intrastate routes between the same points—difficulties of the kind referred to could be avoided.

The Kansas cement interests complain that in Missouri, Iowa, Nebraska, and Colorado the intrastate rates are lower than the interstate rates between points in those states respectively and to and from those states, based on the scales we prescribed, although the Kansas mills in shipping to those states are charged rates based on the scales we prescribed. If this results in unjust discrimination against, or undue prejudice to, interstate commerce, it should be corrected in an appropriate proceeding, but the situation has no direct bearing on the issues in this case. We are here concerned only with the intrastate rates in Kansas in their relation to the interstate rates.

#### PETROLEUM AND ITS PRODUCTS.

In 1905, the Kansas legislature fixed maximum rates on illuminating oil, gasoline, fuel, and crude oils. These rates were continued in force until increased 25 per cent under general order No. 28, effective June 25, 1918. Shortly thereafter, the increase was changed from 25 per cent to 4.5 cents per 100 pounds. Later, during federal control, the rates on petroleum and on crude, fuel, and gas oils were revised and made to conform to the basis in effect in Oklahoma and between Oklahoma and adjacent states. The following table shows in cents per 100 pounds the rates on crude and fuel oil from the time of the estab-

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lishment of the statutory rates in 1905, and the rates up to the present time, effective December 5, 1919, together with the rates sought by the carriers in this case. The rates shown are for one-line hauls. For two-line hauls the rates are from 0.5 cent to 2 cents per 100 pounds higher. On gas oil, the rates are 2.5 cents higher than on crude and fuel oils.

Haul.	Statutory rates.	Rates under supplement to general order No. 28.	Present rates effective Dec. 5, 1919.	Rates sought.
	Cents.	Cents.	Cents.	Cents.
25 miles.....	4.5	9	9	12
30 miles.....	5.5	10	10	13.5
75 miles.....	6.5	11	11	15
100 miles.....	7	11.5	12	16
125 miles.....	7.5	12	12.5	18
150 miles.....	8	12.5	14	19
175 miles.....	8.5	13	15	20.5
200 miles.....	9	13.5	15.5	21
225 miles.....	9.5	14	16.5	22.5
250 miles.....	10	14.5	17	23
275 miles.....	11.5	16	18	24.5
300 miles.....	11.5	16	18.5	25
325 miles.....	12.5	17	19.5	26.5
350 miles.....	12.5	17	19.5	26.5
375 miles.....	13.5	18	20	27

The following table shows in cents per 100 pounds the ton-mile and car-mile earnings, as shown by the record:

Haul.	Rates per 100 pounds.			Ton-mile earnings.			Car-mile earnings.		
	Statutory rates.	Present rates.	Rates sought.	Statutory rates.	Present rates.	Rates sought.	Statutory rates.	Present rates.	Rates sought.
25 miles.....	4.5	9	12	2.6	7.2	9.6	133.2	266.4	355.2
30 miles.....	5.5	10	13.5	2.2	4	5.4	81.4	148	199.8
75 miles.....	6.5	11	15	1.7	2.9	4	62.9	107.3	143
100 miles.....	7	12	16	1.4	2.4	3.2	51.8	83.8	118.4
125 miles.....	7.5	12.5	18	1.2	1.8	2.9	44.4	79.9	107.3
150 miles.....	8	14	19	1.06	1.86	2.53	39.2	68.8	93.7
175 miles.....	8.5	15	20.5	.97	1.7	2.34	35.9	62.9	86.58
200 miles.....	9	15.5	21	.9	1.65	2.1	33.3	57.34	77.7
225 miles.....	9.5	16.5	22.5	.85	1.5	2	31.5	55.5	74
250 miles.....	10	17	23	.8	1.36	1.84	29.6	50.3	68.08
275 miles.....	11.5	18.5	25	.76	1.23	1.66	28.1	45.5	61.43
300 miles.....	12.5	19.5	26.5	.77	1.2	1.63	28.5	44.4	60.31
325 miles.....	12.5	20	27	.77	1.14	1.6	28.5	42.13	58.2

As previously stated, the Court of Industrial Relations, after the decision in Ex Parte 74, denied the increases sought on petroleum; crude, fuel, road, and gas oils; petroleum asphalt; and petroleum wax tailings; and granted a 30 per cent increase on other petroleum products; whereas on interstate traffic the increase allowed by us on petroleum and its products generally was 35 per cent. The oil shippers of Kansas vigorously oppose any further intrastate increases.

Fuel oil competes with coal. The Kansas oil interests show that at the present time the intrastate fuel-oil rates to a number of important points average about 192 per cent of the slack-coal rates, and the proposed fuel-oil rates average about 221 per cent of the proposed slack-coal rates. They point out that the carriers seek about \$29 per car increase in freight charges, although during the past 9 or 10 months the price of crude oil has dropped about 50 per cent and that of fuel oil about 70 per cent. Prices of refined products at the time of the hearing had dropped from 40 to 60 per cent.

Data, submitted by the shippers, show how the ratio of freight charges to the values of the oils has increased, and what the increase would be under the rates sought by the carriers. On crude oil, the charges were formerly 11 per cent of the value of the oil; under the present rates they are 22 per cent of the value, and under the proposed rates, 29 per cent of the value of the crude oil. On fuel oil they were formerly 12 per cent, are now 59 per cent, and under the proposed rates would be 79 per cent.

The following statistics for Kansas intrastate oil traffic were compiled from data furnished by six shippers, covering a period prior to the decision in *Ex Parte 74*:

	Haul.	Loading per car.	Ton-mile earnings.	Car-mile earnings.	
				Loaded.	Loaded and empty.
	<i>Miles.</i>	<i>Pounds.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>
Crude and fuel oils.....	105	64,000	24.4	77.8	33.9
Gas oils.....	164	57,000	30.5	57.8	28.9
Refined oils.....	160	49,000	16.27	40.4	20.2

The loss-and-damage claims on oils in carloads are practically negligible. The movement in Kansas, especially of crude oil and other low-grade oils, is very heavy.

There is evidence to the effect that the present mileage allowance paid by the carriers to owners of tank cars is inadequate. According to data compiled by 54 tank-car operators in the United States, the allowance that would be necessary to equal the cost of repairs, depreciation, and 6 per cent interest on investment is 2.39 cents per mile, whereas the present allowance made by the carriers is only 1.5 cents per mile.

Several instances were cited in which the present intrastate rates are higher than interstate rates in the west.

It is testified that there is practically no interstate movement of crude oil from Kansas wells. Such interstate movement as there is is via pipe line.

Elsewhere in the midcontinent field there is a much wider spread between the lighter and the heavier oils than now exists intrastate in Kansas. In *Midcontinent Oil Rates*, 38 I. C. C., 109, we fixed upon a differential of 5 cents in favor of the heavy oils, and that relationship has been quite generally observed since that time in western territory, except that it has been increased by the percentage increases following Ex Parte 74. The carriers indicated that the narrow spread between the light and heavy oils in Kansas is justified because the rates are so low, but it should be observed that the rates to Kansas City, Mo., which were approximately the same as to Kansas City, Kans., were approved by us in *Midcontinent Oil Rates*, *supra*. The average short-line distance from the Kansas producing points to the Kansas refineries is 175 miles. Formerly the rate from Kansas points to Kansas City, Kans., was 9.6 cents, and a rate of 10 cents was published to Kansas City, Mo. This is the rate that was approved by us in *Midcontinent Oil Rates*, *supra*.

Like most other industries in the country, Kansas oil refineries are either not operating at all or only at about half capacity. Witness for these interests stated that any further increases, particularly in the rates on low-grade oils, would be disastrous to the refiners, as it would more than wipe out the profit, there being too narrow a margin between the values of the crude oil and the refined oils. Many of the refiners have no pipe lines of their own, and it is impracticable to use the pipe lines of the larger companies, mainly because of the 100,000-barrel minimum required. The low transportation costs enjoyed by those who can ship via pipe line is a source of great disadvantage to the smaller companies. The rate via rail on crude oil for 100 miles in Kansas is at present 12 cents per 100 pounds, and the carriers seek to increase it to 17 cents. The pipe-line rate for this same distance is but 3.22 cents per 100 pounds. For the most part, the refiners that have pipe lines are the ones that are in operation at the present time.

#### ELECTRIC LINES.

It is agreeable to the Court of Industrial Relations that whatever increases are found proper for the steam roads be allowed the electric lines also. Special hearing was arranged for these carriers, but only two of them offered evidence. The others seek no relief at our hands in this case.

In Ex Parte 74, the increases granted the electric lines in charges for freight services were the same as were granted the steam roads. As to passenger fares of electric lines, we made no definite finding, but stated that our conclusions were not to be taken as a disapproval of increases in passenger fares.

*Arkansas Valley Interurban Railway Company.*—This company has about 60 miles of standard-gauge electrically operated line in south central Kansas, its principal stations being Wichita, Newton, and Hutchinson. Except for the difference in motive power, it operates in substantially the same way as the steam carriers. Its business is substantial, and it competes with several of the principal steam lines that operate in the state, and maintains the same general level of intrastate rates, fares, and charges as do those lines. It was not involved in Ex Parte 74. Up to the time of the hearing in the instant case it had done only an intrastate business, but it connects with steam roads which have recently agreed to the establishment of joint intrastate and interstate rates, and the details of the arrangement are now being worked out. Powers of attorney and concurrences have been issued to publishing agents and connections and filed with us. This road has recently filed its own tariffs with us, and the rates, fares, and charges named therein are applicable to interstate traffic. It has been called upon to make annual reports to us. It asks that we fix its interstate rates, fares, and charges and require increases on intrastate traffic to remove unjust discrimination against interstate commerce. As we understand it, the Court of Industrial Relations agrees that for the purposes of this case we may regard the Arkansas Valley as a common carrier subject to the act and actually engaged in the transportation of both intrastate and interstate commerce.

Frequently, interstate passengers between points on steam roads and points common to the steam roads and the Arkansas Valley travel part of the way via this road, breaking their journey at the junction point, instead of traveling entirely via the steam roads, in order to secure a lower through charge, the basis of the intrastate fares of the electric line being lower than the basis of the interstate fares of the steam roads. For instance, the through charge via steam roads from Wichita to Kansas City is \$8.27, made up of the fare of \$7.66 plus a war tax of 61 cents, while the charge based on the combination of the separate fares of the electric and steam lines is \$7.50, plus 60 cents war tax, resulting in a total charge of \$8.10. The saving to the passenger is 17 cents. From Wichita to Colorado common points the saving is 79 cents. The steam roads are losing revenue which they would not lose if the electric line's intrastate fares were on the basis sought. In other words, the intrastate revenue of the steam roads is being reduced by the failure of the Court of Industrial Relations to grant the electric line an increase, thus tending to require that the rates, fares, and charges on other traffic, both state and interstate, of the steam roads, be so adjusted as to yield a reasonable return on the total value of the property. Inci-

dentally, it may be noted that the Arkansas Valley is complainant of a difference in its favor, which difference brings it traffic which would not otherwise move via its line. The interstate fares of this road were increased to the general basis of 3.6 cents per mile shortly after the hearing in this case.

Data were offered as to the financial condition of this road, and the indications are that the present returns are inadequate. This evidence stands uncontroverted.

*Joplin & Pittsburg Railway Company.*—This company electrically operates about 105 miles of standard-gauge line in southeastern Kansas and southwestern Missouri. There are several separate divisions. The main line runs from Joplin, Mo., to Pittsburg, Kans., while three smaller divisions radiate from Pittsburg to points in Kansas. This road does an important freight and passenger business, both intrastate and interstate, similar in character to that done by competing and connecting steam roads. Much of the freight traffic moves on joint rates with the steam lines to and from various points in the country. Its business is closely interwoven with that of the steam roads.

Its rates, fares, and charges are in practically all instances the same as those of the steam roads with which it competes. Following Ex Parte 74, its interstate rates, fares, and charges were increased correspondingly with those of the steam roads. It asks that its interstate fares be found reasonable, as its charges for interstate freight service have already been found in Ex Parte 74, and that its intrastate rates, fares, and charges be ordered increased to remove unjust discrimination against interstate commerce.

The state authorities have required 40-ride commutation fares on the basis of four-fifths of the standard intrastate fare of 3 cents per mile, apparently used largely by miners traveling to and from work at points on the Joplin-Pittsburg division, and 40-ride school fares for children under 18 years of age, on the basis of three-fifths of the standard intrastate fare. These fares are applicable between all points on the system, but the purchaser of a ticket must specify the points between which it is to be used. The tickets bear a 30-day limit. No such fares apply interstate, and we are asked by the Joplin & Pittsburg to require their cancellation.

Interstate passengers paying on the basis of 3.6 cents per mile ride with intrastate passengers paying on the basis of 3 cents per mile. The cost of carrying both is substantially the same, and there is generally no difference in the service and accommodations furnished. Through interstate fares between Joplin and Pittsburg are occasionally defeated by passengers breaking their journeys at points near the state line.

The principal interstate passenger business is on the Joplin-Pittsburg division. The passenger equipment does not run through from one division to another, and passengers destined to or coming from divisions other than the Joplin-Pittsburg division must transfer at Pittsburg and purchase new tickets. It is a fact, however, that there is interstate travel, because passengers moving between points on the other divisions and points outside the state break their journey at Pittsburg only because there is no through service and no through ticketing arrangement except as to commutation fares. The fact that the passenger breaks, or must break, his journey at Pittsburg does not make the traffic intrastate. Through passengers now pay the combination of intrastate and interstate fares, because the Joplin & Pittsburg has never published any interstate fares between Pittsburg and points in Kansas, apparently for the reason that it was convinced that they would not be used so long as the intrastate fares were lower.

The regular trains of this company do a small amount of intracity passenger business in Joplin and Pittsburg. The fare is 6 cents in Joplin and 5 cents in Pittsburg, fixed by franchises. The revenue derived from these fares is of little consequence and no increases therein are sought and none are here granted.

There is considerable evidence to the effect that the present intrastate fares do not yield reasonable return nor contribute, as compared with interstate fares, in fair proportion to the carrier's revenue requirements.

#### CONCLUSIONS.

Except for the Joplin & Pittsburg Railway Company, which dealt with its commutation and school fares, no evidence was offered with respect to excursion, convention, and other fares for special occasions, commutation and other multiple forms of tickets, or club-car charges. Therefore our findings and order, so far as fares are involved, will relate only to the standard local and interline fares. Also, our findings do not apply to charges for the movement or parking of special or private cars or trains. Charges for these services were not included in our finding in *Ex Parte 74*, and no basis here appears for holding that the interstate charges, which have been increased 20 per cent along with passenger fares, are reasonable. See *Montana Rates and Fares*, 60 I. C. C., 61.

Subject to the above reservations, we are of the opinion and find that the increases made by the steam carriers which have been hereinbefore specifically named, in passenger fares and excess-baggage charges under our decision in *Ex Parte 74*, and now in effect, result in reasonable fares and charges for interstate transportation within

the group considered in this proceeding, and that the failure of said respondents within the state of Kansas correspondingly to increase intrastate fares and charges has resulted in the past and will result in the future in intrastate fares and charges lower than the corresponding interstate fares and charges and in undue prejudice to persons and localities outside the state and to persons traveling in interstate commerce within the state and between points in the state and points in other states; in unreasonable preference to persons and localities in Kansas; and to persons traveling intrastate in Kansas; and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination can and should be removed by making increases in intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made and now in effect as aforesaid by said respondents in interstate fares and charges.

We further find that the increases made by said respondents under Ex Parte 74, relating to rates on milk and cream, and now in effect, result in reasonable rates on milk and cream for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Kansas to increase the intrastate rates on milk and cream correspondingly has resulted in the past and will result in the future in intrastate rates lower than the corresponding interstate rates; in undue prejudice to shippers of milk and cream in interstate commerce within the state of Kansas and between points in the state of Kansas and points in other states; in undue preference and advantage to shippers of milk and cream in intrastate commerce in Kansas; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination can and should be removed by making increases in intrastate rates on milk and cream which shall correspond with the increases heretofore made and now in effect as aforesaid in the rates on milk and cream shipped in interstate commerce.

We further find that the increases made by said carriers in charges for freight services under our decision relating to the western group in Ex Parte 74, and now in effect, result in reasonable charges for interstate transportation within the said group, and that the failure of said respondents within the state of Kansas correspondingly to increase their intrastate charges for freight services in force on the date of our decision in Ex Parte 74, except as to petroleum, crude, fuel, road, and gas oils; petroleum wax tailings; and petroleum asphalt, resulted in the past and will result in the future in undue prejudice to persons and localities outside the state and in unrea-



sonable preference to persons and localities within the state, and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination should be removed by making increases in the intrastate charges for freight services, except as to petroleum, crude, fuel, road, and gas oils; petroleum wax tailings; and petroleum asphalt, in force on the date of our decision in Ex Parte 74, which shall correspond with the increase heretofore made and now in effect as aforesaid by respondents in the interstate charges in the western group.

We further find that the increases in passenger fares made by the Joplin & Pittsburg Railway Company corresponding to those authorized for steam carriers in Ex Parte 74 result in reasonable fares for passenger transportation in interstate commerce, and that the failure of said respondent within the state of Kansas correspondingly to increase intrastate fares has resulted in the past and will result in the future in intrastate fares lower than the corresponding interstate fares; in undue prejudice to persons and localities outside the state and to persons traveling in interstate commerce within the state and between points in the state and points in other states; in unreasonable preference to persons and localities in Kansas and to persons traveling intrastate in Kansas; and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination should be removed by making increases in intrastate passenger fares which shall correspond with the increases heretofore made as aforesaid by said respondent in interstate fares.

We further find that the increases in charges for freight services made and now in effect by said Joplin & Pittsburg Railway Company under our decision in Ex Parte 74, and now in effect, result in reasonable charges for interstate transportation, and that the failure of said respondent within the state of Kansas correspondingly to increase intrastate charges had resulted in the past and will result in the future in undue prejudice to persons and localities outside the state; in unreasonable preference to persons and localities within the state; and in unjust discrimination against interstate commerce.

We are of opinion and find that reasonable rates, fares, and charges for interstate application on the Arkansas Valley Interurban Railway are or would be those in effect July 29, 1920, plus the increases authorized for the western group in Ex Parte 74. If the interstate rates, fares, and charges are increased as here authorized and the intrastate rates, fares, and charges are not increased correspondingly intrastate traffic will not contribute in fair proportion to this road's revenues, but as far as the present is concerned there is

no general showing of unjust discrimination against interstate commerce. However, the record, so far as this road is concerned, will be held open for such further proceedings as may be necessary in case proper increases are made and applied interstate and not intrastate.

We further find that whether the aforesaid passenger fares, excess-baggage charges, rates on milk and cream, or charges for freight services pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

The above findings are abundantly supported by the facts of record. These findings are without prejudice to the right of the authorities of the state of Kansas or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specific intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, and charges in such a way as to contravene the provisions of the interstate commerce act. In appropriate proceedings we shall avail ourselves of opportunity to cooperate with the Kansas authorities in considering particularly such questions as joint rates in lieu of combination rates and the correction of the disparities due to the relocation of the line of the Atchison, Topeka & Santa Fe between Kansas City and Topeka; also any other matters that may be deemed important.

Tariffs giving effect to the foregoing findings may be made effective on not less than five days' notice.

An appropriate order will be entered.

COMMISSIONER EASTMAN dissents.

CAMPBELL, *Commissioner*, dissenting:

I am unable to give my assent to the conclusions reached by the majority herein. I can not believe that the Congress, by enacting the amendment of 1920 to the interstate commerce act, intended to do more than to express by statute the law as announced in the *Shreveport Cases*. The dissenting opinion of COMMISSIONER EASTMAN in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, 299, to my mind is a clear exposition of the law and construes the act, in so far as this particular feature is concerned, as the Congress intended it to be construed.

The report in this case clearly shows that the Court of Industrial Relations of Kansas had under consideration the earnings accruing to the various carriers under the existing state rates when it denied the increases sought by the carriers following our decision in *Increased Rates*, 1920, 58 I. C. C., 220. It calls particular attention to  
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the fact that the intrastate class rates between many points in Kansas are relatively higher than certain interstate rates. Notwithstanding this showing of the existence of apparent discrimination between state and interstate rates, the majority in effect perpetuates this discrimination instead of ordering its removal and thereby takes away from the state authorities the right to remove discrimination which may have existed and which will hereafter continue to exist.

I have not been able after a careful reading of section 13 to find any new grant of jurisdiction over intrastate rates that the Commission did not already have under section 8 through the doctrine announced in the Shreveport decisions. Subdivision 4 of section 13 provides that whenever after—

investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulations, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination,

clearly pointing out that we, in order to take jurisdiction over intrastate rates, must after full hearing find *discrimination*. The proceedings in all of the state cases clearly indicate to my mind that they are not instituted and the hearings held for the purpose of determining discrimination only, but for the purpose of determining the amount of revenue to be given to the carriers. I can not bring myself to believe that the law is broad enough to vest us with jurisdiction over intrastate rates for revenue purposes, especially when we take into consideration subdivision 2 of section 1 of the interstate commerce act, which states that the provisions thereof shall not apply

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state and not shipped to or from a foreign country from or to any place in the United States as aforesaid.

Lewis, *Commissioner*, dissenting in part:

While holding the belief that the railroads of this country must be viewed and dealt with broadly as a national transportation system, and that if state authority seeks to maintain preferences for local interests that are detrimental to realization of such concept a broader regulation must be applied, I believe that the majority in this instance carry the doctrine of federal authority to unjustified extremes.

My conception of the intent of the Congress, as expressed in section 15a of the interstate commerce act, is that—at least in meeting the extreme crisis that confronted the Congress at the time of its enactment and which still continues—no state shall have the power to maintain charges for transportation which will result in that state's failing to carry its just part of the transportation load or create conditions which will thwart this accomplishment.

As I view it, federal authority is, therefore, applicable only (1) to prevent unjust discrimination or undue preference, prohibited by sections 2, 3, and 13 of the interstate commerce act, or (2) in the matter of rates, fares, and charges which do not sustain their fair share of the burden of maintaining the national system of transportation (section 15a). I therefore concur in the application of federal authority to set aside state-authorized tariffs, such, for example, as those for the transportation of passengers in Kansas. Again—using passenger fares for purposes of illustration—wholly aside from the discrimination between intrastate and interstate passengers in Kansas, there is discrimination between people in Kansas paying a 3-cents-per-mile rate and people in Nebraska, Colorado, Missouri, Iowa, and other states in the same group, who, either by action of their own state commissions or by reason of action by this Commission, are paying 3.6 cents per mile for the same service performed under conditions that are practically identical with those prevailing in Kansas. Moreover, the maintenance of lower rates for like service in one state causes resentment in the other states. Ultimately this must be reflected in unfavorable action in states that otherwise would willingly carry their full apportionment of the burden of transportation. Such conditions would lead to destructive confusion, if not to chaos. It is obvious that losses resulting from such lower rates and fares or disturbances must be recouped by (1) higher interstate rates and fares, or (2) higher rates and fares in other states. I concur, therefore, in the action of the majority in the matter of all such rates, fares, and charges which not only are violative of the prohibition against unjust discrimination and undue preference or prejudice, but which also fail to meet the requirements of section 15a.

However, there is in Kansas a great body of freight rates prescribed by state authority that are higher than corresponding interstate rates. The report sets out the fact that the mileage class rates applicable generally throughout the state exceed the rates on traffic moving into Kansas from those points where the principal competition is encountered. Further, due to the absence of joint rates, the intrastate shipper must pay for the transportation of his traffic, as a rule, a greater sum than is required of his competitors at Kansas City and St. Joseph. The report shows that the rates on live stock

and certain other commodities in Kansas, being based on the mileage scale, are relatively higher than the interstate rates. Other such instances in which the disadvantage is against the intrastate shipper are cited.

The transportation services whether pertaining to interstate or intrastate commerce are found to be performed under substantially similar circumstances and conditions. How, then, in such instances where the interstate shipper now pays a relatively lower rate than the intrastate shipper, can it be found that he is subjected to undue prejudice, or that free movement of interstate commerce is impeded or that such rates result in a burden being laid on interstate commerce?

I am not unmindful of the provision that nothing in the order shall be construed as requiring any common carrier to establish, put in effect, or maintain any rate, fare, or charge for the transportation of passengers or property in intrastate commerce which is greater than its corresponding rate, fare, or charge applicable to such transportation in interstate commerce. This, however, does not fully meet the situation in at least several respects, which need not be discussed here.

It is my opinion that the Commission goes too far when, encountering such a situation, it sweepingly condemns practically the entire state rate structure and issues an order, the effect of which is to set aside or cripple state authority that, except in the case of certain rates which can be isolated and dealt with separately, does not appear to have been exercised in a manner unfair to the railroads, or—except in such instances—has not failed to cover its part of the maintenance, operation, and success of the national or group transportation system.

The state's action was taken after hearing. The foregoing report and order shows that "the steam carriers and Court of Industrial Relations estimate that on a year's business the revenues of the steam carriers from intrastate traffic in Kansas would be considerably over \$3,000,000 less than if the increases authorized by us for interstate commerce were applied." The carriers' estimate is \$3,245,942.45, and the estimate of the Court of Industrial Relations is \$3,409,636.49. These estimates segregate the specific business on which the so-called losses occur. They show that by putting into effect the interstate passenger, excess-baggage, and milk and cream rates approximately \$1,950,000 of this loss could be prevented and that practically all of the remainder would be wiped out by similar action in the case of rates on a few specific commodities.

The most unfortunate effect of such sweeping condemnation of all state rates is the prostration of state authority. The effect is to

create a situation in which local facilities for readjusting state rates to the level of interstate rates are seriously disturbed, if not destroyed. On the other hand, the federal commission does not set itself to the work of making corrections. It contents itself by declaring that its order is not to be construed as requiring the carriers to maintain intrastate rates in excess of corresponding interstate rates, leaving to whoever may be interested the task of determining the comparative levels and instituting such action as may be necessary to remove discrimination against state traffic.

Objections such as outlined could be eliminated by recognition of state authority, with approval, to the extent that it has functioned properly, and by limiting invasion by federal authority only in so far as is necessary to correct such state authority exercised at variance with the requirements of the federal law.

In short, my concept of the law and of possibilities for its successful and more acceptable administration inclines me to a course of preservation and strengthening of state tribunals which are well designed for the hearing and settlement of local affairs and to the working out of a coordination of such agencies with those of federal regulation.

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No. 8845.<sup>1</sup>

## NATCHEZ CHAMBER OF COMMERCE

v.

LOUISIANA &amp; ARKANSAS RAILWAY COMPANY ET AL.

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Submitted June 7, 1921. Decided July 5, 1921.

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Order of May 9, 1921, continuing in effect beyond June 2, 1921, the order in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, entered January 16, 1919, vacated.

*B. F. Martin* for complainant.

*W. M. Barrow* for interveners.

*Charles D. Drayton* for defendants.

## REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, we prescribed for application between Mississippi River crossings, Memphis, Tenn., to New Orleans, La., inclusive, and both western Louisiana and southern Arkansas points, a distance scale of class rates not exceeding by more than 25 per cent the Shreveport scale, prescribed for application between Shreveport, La., and points in Texas, in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, subject to charges for bridge toll at Memphis and for river crossings at Natchez, Vicksburg, Baton Rouge, and New Orleans, except that certain differential lines were permitted to charge higher rates. We further required the carriers to cease and desist from charging between said crossings and points in western Louisiana and southern Arkansas higher class rates than they contemporaneously maintained for like distances between western Louisiana points and between western Louisiana points and southern Arkansas points, except that the charges for bridge toll or river crossing should be added to the rates from the crossings.

The order dated January 16, 1919, became effective June 2, 1919, and provided that it should continue in force for a period of not less

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<sup>1</sup> This report also embraces No. 8920, *Same v. Arkansas, Louisiana & Gulf Railway Company et al*; No. 9036, *Same v. Arkansas & Louisiana Midland Railway Company et al*; No. 6390, *Memphis Freight Bureau v. St. Louis, Iron Mountain & Southern Railway Company et al*; and No. 7250, *Shreveport Chamber of Commerce v. Alabama & Vicksburg Railway Company et al*.

than two years from the date when it took effect. In compliance with the order the defendants established the scale prescribed between the river crossings and points in western Louisiana and southern Arkansas, and also between points in western Louisiana, and between points in western Louisiana and points in southern Arkansas. The interstate rates between the river crossings and points in western Louisiana and southern Arkansas, and between points in western Louisiana and points in southern Arkansas, were increased 35 per cent on August 26, 1920, under the authority of *Increased Rates, 1920*, 58 I. C. C., 220; and the intrastate rates between points in western Louisiana were increased by like amounts under the authority of the Railroad Commission of Louisiana.

Under date of May 9, 1921, upon petition of the defendants and the complainant, an order was entered modifying the order of January 16, 1919, so that it should continue in effect until the further order of the Commission. On June 8, 1921, oral argument was had upon request of the Railroad Commission of Louisiana that the order be so modified as not to apply to intrastate class rates in western Louisiana.

The railroad commission urges that the basis for our jurisdiction over intrastate rates is undue prejudice or unjust discrimination against interstate commerce; that when the original order was entered such prejudice or discrimination rested upon a finding of a different level of intrastate and interstate rates; and that inasmuch as the intrastate rates are now so adjusted by the state rate-making authority as to result in no undue prejudice or unjust discrimination, there is no basis for the extension of the operation of our order.

The defendants contend that the present nonprejudicial adjustment was brought about by our order; that the circumstances and conditions surrounding the transportation have not materially changed since the issuance of the original order; and that, as the act has now been amended to empower us to make our orders effective indefinitely, the order should be continued in effect to prevent the recurrence of undue prejudice or unjust discrimination.

Upon further consideration, we are of the opinion and find that the undue prejudice or unjust discrimination for the removal of which our order of January 16, 1919, was entered does not now exist. We are persuaded that that situation will not be revived. Our order of May 9, 1921, should be vacated.

An appropriate order will be entered.



INVESTIGATION AND SUSPENSION DOCKET No. 1309.  
TRANSIT PRIVILEGES ON GRAIN AT CHICAGO  
DISTRICT STOP-OVER POINTS.

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*Submitted June 11, 1921. Decided July 1, 1921.*

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Proposed modification of rule governing rates on grain accorded transit at Chicago district stop-over points found justified. Order of suspension vacated, and proceeding discontinued.

*D. P. Connell* for respondents.

*H. H. Bernstein* for Central Inspection & Weighing Bureau.

*James Clarke Jeffery* and *J. S. Brown* for Board of Trade of City of Chicago.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective March 15, 1921, respondents propose to modify in the manner hereinafter explained, the rule governing the rates to be applied to grain and grain products accorded transit at Chicago district stop-over points. Upon protest of the Board of Trade of the City of Chicago, the schedules were suspended until August 12, 1921..

The present rule governing the rates on transit grain at Chicago district stop-over points is:

The through rate to be applied to transit Grain shall be the lawfully published rate through from the original point of shipment or rate basing point to final destination in effect via the transit point at the time of initial shipment from point of origin or rate basing point applicable to the Grain covered by inbound billing which these rules permit to be matched against outbound shipments.

In the suspended schedule respondents propose to eliminate the words "or rate basing point" from the rule, and the protest is directed against this modification.

The present rule was established January 20, 1921. For many years prior thereto it did not contain these words, and it is stated that their inclusion in the present tariffs was the result of error in compilation. The words "rate basing point" as used in the present

rule mean a point between the point of origin and Chicago at which the shipments may be accorded transit.

Respondents' position is that the present rule is improper and that the elimination of these words is necessary in order to comply with our rulings and decisions.

Protestant asserts that the rules in tariffs in which defendants participate, and now applicable at Toledo, Ohio, and numerous other competing points throughout central territory, are substantially the same in wording as the present rule applicable at Chicago. It contends that to eliminate these words from the rule would result in an unjust disadvantage to the Chicago market.

To illustrate how the proposed change in the rule would operate to injure the Chicago grain distributor, it is assumed that two cars of grain are shipped from Grand Island, Nebr., to New York, N. Y., for export. The cars move to Omaha and the grain is there accorded transit. While the grain is in storage at Omaha the reshipping rate from Chicago to New York, which is the same as that from Toledo, is reduced. Subsequent to the reduction of the reshipping rate from Chicago the two cars of grain are shipped from Omaha for further transit, one at Chicago and the other at Toledo. Later both cars are reshipped to New York as originally intended. Protestant asserts that the freight charges of the Chicago reshipper would be assessed on the basis of the rates in effect at the time the car left Grand Island, whereas under the alternative provision of "original point of shipment *or* rate basing point" the Toledo reshipper would have his charges assessed on the basis of rates in effect at the time of movement from Omaha, and hence would get a lower rate.

In the cases cited by respondents we held that the proper rate to be applied from the reshipping point was the rate applicable from that point at the time when shipment initially moved from its first point of origin. In *Minneapolis Traffic Asso. v. A. A. R. R. Co.*, 42 I. C. C., 76, 78, referring to the applicable rate on grain traffic accorded transit at Minneapolis, we said:

\* \* \* this case is governed by the principles announced in *Through Routes and Through Rates*, *supra* [12 I. C. C., 163], and \* \* \* therefore any rates charged by the defendants on the shipments here involved in excess of the rates in effect when the shipments of wheat originated were illegal and \* \* \* notwithstanding the temporary interruption of the continuity of movement at Minneapolis, the legal rates for the movement east of Chicago were the reshipping rates in effect at the time the wheat moved from the country points \* \* \*.

In Conference Ruling 119 we held as follows:

119. RESHIPPING OF GRAIN.—Upon inquiry whether a proposed tariff rule providing that "the rate to be applied on all outbound transit grain of record 62 I. C. C.

shall be the specific rate that is lawfully in effect from Chicago at the time the grain is reshipped" may lawfully be incorporated in a tariff:

Held, That the Commission can not sanction the rule, and that the grain can move only as a through movement on the through rate in effect at the time it starts, or as a local movement.

Respondents assert that regardless of this wording of the present rule charges have been assessed in accordance with our decisions and conference ruling above quoted. Protestants' objections are founded on the probability of improper application of rates at competing points.

We find that the respondents have justified the schedules under suspension. An order will be entered vacating our order of suspension and discontinuing this proceeding. The same correction must be made forthwith in respondents' tariffs wherever the rule contains similar provisions.

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No. 11897.

## BROOKS ELEVATOR COMPANY

v.

## AHNAPEE &amp; WESTERN RAILWAY COMPANY ET AL.

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*Submitted March 23, 1921. Decided June 23, 1921.*

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Rates on blackstrap molasses, in carloads, from New Orleans, La., Mobile, Ala., and Memphis, Tenn., to Minneapolis, Minn., found not unreasonable or unduly prejudicial. Complaint dismissed.

*E. T. Gervais* for complainant.

*Kenneth F. Burgess* and *L. C. Mahoney* for Chicago, Burlington & Quincy Railroad Company; *L. P. Nash* for St. Louis-San Francisco Railway Company; *W. H. Grumley* for Mobile & Ohio Railroad Company; and *Charles J. Riwey, jr.*, and *H. L. Walker* for Southern Railway Company and Illinois Central Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the grain and grain products business at Minneapolis, Minn., alleges that the rates on blackstrap molasses, in carloads, from New Orleans, La., Mobile, Ala., and Memphis, Tenn., to Minneapolis are unreasonable and unduly prejudicial as compared with the rates to St. Louis, Mo., Chicago, Ill., Kansas City, Mo., Milwaukee, Wis., Omaha, Nebr., and points taking the same rates. We are asked to prescribe reasonable and nonprejudicial rates for the future. Rates will be stated in cents per 100 pounds.

Prior to 1914 there were no specific commodity rates on blackstrap molasses. Such rates were established from Mobile to St. Louis on imported blackstrap early in that year and, later, on imported and domestic blackstrap from New Orleans and other points to St. Louis and other destinations. Complainant is more concerned about their relative adjustment than about the level.

The following table shows the present rates on domestic blackstrap from Mobile and New Orleans to the points named and the earnings thereunder. Car-mile earnings are based upon a tank-car load-

ing of 90,000 pounds, and all earnings are calculated at the highest rate and over the shortest workable route from either point of origin :

To—	Shortest workable route.	Rates. <sup>1</sup>		Earnings.	
		Valued at 8 cents or less per gallon.	Valued at over 8 cents per gallon.	Per ton- mile.	Per car- mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
St. Louis, Mo.....	644	30	33.5	10.40	46.8
Chicago, Ill.....	867	40	43.5	10.08	45.2
Kansas City, Mo.....	868	40	43.5	.....	.....
Milwaukee, Wis.....	952	40.5	44	10.14	45.6
Omaha, Nebr.....	1,064	43.5	46.5	9.77	43.9
Minneapolis, Minn.....	1,284	44	47.5	8.93	40.2
		52	55.5	.....	.....
		52.5	56	8.72	39.2

<sup>1</sup> Imports now move on domestic rates.

<sup>2</sup> Over certain lines west of the Mississippi River.

The rate from Memphis to Minneapolis is 5 cents less than from Mobile and New Orleans, the usual differential under the Gulf ports.

The rates to St. Louis, Kansas City, and Omaha are those approved in *Molasses from Texas and Louisiana*, 40 I. C. C., 435, increased under general order No. 28 of the Director General of Railroads and the general increase of 1920. In the case cited we also approved a rate of 42.5 cents to St. Cloud, Minn., northwest of Minneapolis, which, under the authorized increases, is now 70.5 cents. The rates to Chicago and Milwaukee, similarly increased, were found not unreasonable or unduly prejudicial in *Scully Syrup Co. v. A. G. S. R. R. Co.*, 43 I. C. C., 567.

We find that the rates assailed are not unreasonable or unduly prejudicial. The complaint will be dismissed.

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No. 10512.  
CHARLES BOLDT PAPER MILLS  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted February 16, 1921. Decided June 14, 1921.*

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Upon further hearing, found: That the rate charged on silicate of soda, in tank-car loads, from Ancor, Ohio, to Red Bank, Ohio, during federal control, was applicable and not unreasonable. Complaint dismissed. Original report, 55 I. C. C., 331, overruled.

*T. J. McLaughlin* for complainant.

*Royal T. McKenna* for defendant.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner.

In our original report herein, 55 I. C. C., 331, we considered the rate charged by defendant on two tank-car loads of silicate of soda shipped in November, 1918, and March, 1919, from Ancor, Ohio, to Red Bank, Ohio. Upon petition of defendant the case was reopened and further heard. Rates are stated herein in cents per 100 pounds.

The shipments moved over the Norfolk & Western and the Pittsburgh, Cincinnati, Chicago & St. Louis, approximately 12 miles. Silicate of soda was rated fifth class in the governing official classification and charges were collected at the minimum fifth-class rate of 9 cents. In defendant's exceptions to this classification silicate of soda was rated 85 per cent of the sixth-class rate, which would have been 8 cents over the route of movement and 5.5 cents over another available route.

We found that the rate applicable over the route of movement was 8 cents; that the shipments had been overcharged and misrouted, and awarded reparation to the basis of 5.5 cents. Upon further hearing defendant urged that under the following provision published in the exceptions referred to and in the tariff naming the class rates from and to these points the 9-cent rate was applicable:

No rate shall be applied on any traffic moving under class rates lower than the amount in cents per one hundred pounds for the respective classes as shown below for the several Classifications.

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The minimum rate on any article shall be the rate for the class at which that article is rated in the Classification shown below applying in the territory where the shipment moves. (See Note.)

Where Rates are Governed by Official Classification No. 44 (R. N. Collyer, Agent's I. C. C.—O. C. No. 44, C. R. C.—O. C. No. 44), or Reissues

Classes.....	1	2	3	4	5	6	Rule.	Rule.
							25	26
Rates.....	25	21½	17	12½	9	7	18½	13½

The shipments moved in official classification territory. The provision quoted was established on June 25, 1918, following general order No. 28 of the Director General of Railroads and was in effect when the shipments moved.

It is the position of the complainant that the rates published as percentages of certain class rates are commodity rates and that therefore the minimum provision referred to was not applicable to the shipments.

An exception to the classification, published as this one was, namely, 85 per cent of sixth class, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. This exception was, in effect, the classification of silicate of soda by the individual carriers parties thereto to cover this particular traffic from and to points in the territory specifically described. It can in no sense be considered a specific commodity rate.

Complainant also submitted a few rate comparisons, but the allegation of unreasonableness rests primarily upon the fact that in the great majority of instances specific commodity rates were increased only 25 per cent under general order No. 28, while the minimum fifth-class rate charged represented an increase exceeding 25 per cent of the rate previously applicable. This does not afford a basis for a finding of unreasonableness.

Upon consideration of the whole record we find that the minimum fifth-class rate of 9 cents was applicable to complainant's shipments and was not unreasonable. As this rate applied via all routes, there is no question of misrouting.

An order will be entered dismissing the complaint.

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**TIONESTA VALLEY RAILWAY COMPANY.  
SECOND INDUSTRIAL RAILWAYS CASE.**

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF  
RAILROAD SERVING INDUSTRIES.**

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**INVESTIGATION AND SUSPENSION DOCKET No. 414.**

**CANCELLATION OF RATES IN CONNECTION WITH  
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-  
CATION TERRITORY.**

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*Submitted September 10, 1919. Decided June 11, 1921.*

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Tionesta Valley Railway Company found to be a common carrier subject to the interstate commerce act which may lawfully participate in joint rates with other common carriers or have its switching charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable and a complete and specific statement of any basis agreed upon must be filed with the Commission immediately on its adoption.

*Arthur B. Hayes and W. E. Rice* for the Tionesta Valley Railway Company.

*George Stuart Patterson* for the Pennsylvania Railroad Company.

**SUPPLEMENTAL REPORT OF THE COMMISSION.**

**DIVISION 8, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.**

**BY DIVISION 8:**

The question now before us is whether the Tionesta Valley Railway Company, hereinafter called the Tionesta, is a common carrier subject to the interstate commerce act which may lawfully receive compensation in the form of divisions of joint rates or absorptions of its switching charges out of the through rates on interstate shipments to and from points on its line.

A questionnaire addressed to the Tionesta by us on May 29, 1919, and its response thereto, giving additional information as to changes since January 1, 1914, in physical properties, manner of operation, and other pertinent matters, were made a part of the record with the consent of the Tionesta and its trunk line connections.



The Tionesta operates in Warren, Forest, and Elk counties in the state of Pennsylvania. It was organized as the Tionesta Valley Railroad September 9, 1879, under the laws of the state of Pennsylvania, with an authorized capital stock of \$100,000, and as originally constructed extended south from Sheffield, Pa., along Tionesta creek for about 15 miles. On August 3, 1894, the Tionesta Valley Railway Company was incorporated under the laws of Pennsylvania with an authorized capital stock of \$600,000 and took over the following carriers, consolidating them into one line:

Name.	Capital stock.	Location.	Length.
			<i>Miles.</i>
The Tionesta Valley Railroad.....	\$100, 000	Sheffield, Pa., and south thereof.....	15
The Sheffield & Spring Creek Railroad....	100, 000	From connection with the Tionesta Valley Railroad through Sheffield Junction to Parrish, Pa.....	30
The Garfield & Cherry Grove Railroad....	50, 000	From Sheffield to Garfield, Pa.....	15
Warren & Farnsworth Railroad Company.	100, 000	Extends north from Clarendon, Pa.....	12

On February 17, 1904, the Spring Creek Railway Company, incorporated October 8, 1902, with an authorized capital stock of \$150,000, and extending from Parrish, Pa., to Hallton, Pa., a distance of about 25 miles, was merged with the Tionesta. Of the latter's authorized capital stock shares aggregating \$500,000 in par value are now outstanding, the balance remaining in the treasury. It has no bonded indebtedness and no equipment obligations. It owns 10.21 miles of main track and 6.30 miles of spur tracks and sidings, all standard gauge; and 105.77 miles of narrow-gauge tracks consisting of 38.92 miles of main track and 66.85 miles of spur tracks and sidings. It has also 15.31 miles of third-rail tracks.

The Tionesta has direct track connections with the Pennsylvania at Sheffield and Clarendon, Pa., with the Baltimore & Ohio at Sheffield Junction and Nansen, Pa., with the Pittsburgh, Shawmut & Northern at Hallton, Pa., and with the Sheffield & Tionesta, an industrial line, at Barnes, Pa. The equipment owned by it consists of 16 locomotives, 4 passenger cars, 545 freight cars, and 7 company-service cars, none of which are interchanged with connecting trunk lines, and all of which are narrow gauge except 2 locomotives, which are standard.

Tariffs and annual reports are filed with us, and accounts are kept under our requirements. The Tionesta publishes rates for transportation of freight in carload and less-than-carload quantities, operates a passenger service, and does a mail and express business. The passenger service is not operated for the benefit of employees of controlling or affiliated interests. The total number of passengers

carried during 1918 was 30,080. The Tionesta's passenger trains connect with trains of the Pennsylvania at Sheffield, the Baltimore & Ohio at Sheffield Junction, and the Sheffield & Tionesta at Barnes. Through passenger tickets are sold by trunk lines to points on the Tionesta. Standard forms of bills of lading are used and freight is billed through from points on its lines to destinations on trunk lines.

The Tionesta has its own demurrage tariffs and collects demurrage charges from shippers and receivers of freight in accordance therewith, settling with the connecting trunk lines for detention of cars in accordance with the per diem and demurrage rules of the American Railway Association, of which it is a member. Settlement is made with the Pennsylvania on a demurrage basis, and with all other connections on the per diem basis. During the year 1918 the total amount paid was \$4,942.22, of which \$2,326.82 was for demurrage and \$2,615.40 was for per diem. It receives no per diem reclaims. Three of the industries located on the Tionesta's lines have executed the average demurrage agreement with it, the balance being on a straight demurrage basis.

The Tionesta is controlled by the Central Leather Company of New Jersey through ownership of 4,935 shares of the 5,000 shares of stock outstanding. The remaining 65 shares are held by various individuals but not for the beneficial interest of the leather company. The leather company also controls the Central Pennsylvania Lumber Company, the Elk Tanning Company, and the Penn Extract Works, all of which are served by the Tionesta. Neither the president nor the general freight agent of the Tionesta has any connection with the controlling or affiliated industries, but the vice president, secretary, and treasurer are also employed by affiliated industries and receive no compensation from the Tionesta. It has its own operating force.

The standard-gauge tracks of the Tionesta are in such condition as to make it safe and practicable for trunk line power and equipment to be operated over them, but no occasion arises for such operation, except in interchange service, which is performed regularly.

The general character of service performed is the hauling of freight between the trunk line connections and the different shipping points along the line. The Tionesta serves, in addition to its affiliated industries, 52 independent shippers and receivers of carload freight, located at various points on its lines. Of this total, 20 deal in hay, grain, or merchandise, or all of them; 14 in oil and oil-well supplies; 9 in lumber or lumber products; 2 in glass and sand; and 7 in gasoline, machinery, or other products. It is stated that the Standard Wood Company, at West Sheffield, is the only independent

industry that obtains its raw materials from the interests affiliated with the Tionesta.

There are 41 stations or team tracks along its line, and 5 of them are agency stations. In 1918, during two representative months, 218 cars were handled in interchange service from either team tracks or freight stations.

For the years 1917 and 1918 the total freight handled was 729,412 tons, of which 539,359 tons, or 73.9 per cent, were of lumber or forest products, and 190,053 tons, or about 26.1 per cent, of other freight. The average annual railway operating income for this two-year period was \$30,483.54, and the average annual net income \$26,023.97.

The following is an analysis of traffic and revenue for the months of April and October, 1918, incorporated in the record with a statement that these two months represent a fair average for the year:

Movement.	Tons.	Cars.	Revenue.
<b>Interchange service:</b>			
Between plants of controlling industry and junctions with connecting carriers.....			
Between plants of affiliated industries and junctions with connecting carriers.....	20,424	783	\$14,763.32
Between independent industries and junctions with connecting carriers.....	9,918	374	6,574.78
Between team tracks or freight stations and junctions with connecting carriers.....	218	14	268.45
<b>Total.....</b>	<b>30,560</b>	<b>1,170</b>	<b>21,606.55</b>
<b>Plant and interplant service:</b>			
For controlling or affiliated industries.....	220	22	33.60
For independent industries.....			
<b>Total.....</b>	<b>220</b>	<b>22</b>	<b>33.60</b>
<b>Local switching:</b>			
Between plants of controlling or affiliated industries and other industries, team tracks, or stations.....	360	33	177.09
Between plants of controlling or affiliated industries.....	2,417	250	1,379.92
Between independent industries.....	209	9	31.50
Between team tracks or between freight stations.....			
Between independent industries and connections.....	1,668	93	338.50
<b>Total.....</b>	<b>4,714</b>	<b>385</b>	<b>1,916.92</b>
<b>Local line haul:</b>			
Between affiliated industries.....	21,317	2,349	13,982.74
Between affiliated industries and independent industries.....	2,034	263	1,374.07
Between affiliated industries and independent industries or team tracks or freight stations.....	45	7	34.60
Between independent industries.....	13	3	16.99
Between independent industries and freight houses or team tracks.....	249	26	268.17
<b>Total.....</b>	<b>23,647</b>	<b>2,647</b>	<b>21,114.47</b>
<b>Less-than-carload traffic line haul:</b>			
For controlling or affiliated industries.....	88		139.32
Between affiliated and independent industries.....	95		170.40
For other industries and the public.....	298		670.24
<b>Total.....</b>	<b>481</b>		<b>980.16</b>
<b>Other revenue:</b>			
Passenger revenue.....			1,630.76
Mail revenue.....			145.12
Express revenue.....			18.44
Miscellaneous revenue from affiliated industries.....			126.49
<b>Total.....</b>			<b>1,941.81</b>
<b>Grand total.....</b>	<b>59,822</b>	<b>4,229</b>	<b>\$47,894.61</b>

The foregoing table discloses that during these two months the affiliated industries contributed on a tonnage basis approximately 78.8 per cent of the traffic and 78.5 per cent of the total revenue, while independent shippers or receivers contributed approximately 21.2 per cent of the traffic and 21.5 per cent of the revenue.

The total number of cars and tons handled in interstate or foreign commerce and the revenue therefrom during the two representative months, are given in the following table:

Interchange service—Interstate.	Tons.	Cars.	Revenue.
<b>Carload:</b>			
Between plants of affiliated industries and connecting lines .....	7, 094	254	\$6, 131. 32
Between plants of independent industries and connecting lines .....	3, 664	155	2, 325. 63
<b>Less than carload:</b>			
Between plants of affiliated industries and connecting lines .....	39	.....	61. 20
Between plants of independent industries and connecting lines .....	17	.....	36. 21
<b>Switching:</b>			
Between independent industries and connecting lines .....	600	40	160. 00
<b>Total .....</b>	<b>11, 414</b>	<b>449</b>	<b>8, 714. 35</b>

Two of the 52 independent shippers and receivers of carload freight have industrial tracks or sidings, but the Tionesta does not operate over them.

The average length of haul on interchange traffic between plants of affiliated industries and junctions with connecting carriers or other interchange points is stated to be 14 miles; between independent industries and junctions with connecting carriers or other interchange points, 12 miles; and between team tracks or freight stations and junctions with connecting carriers or other interchange points, 12 miles; all over tracks of the Tionesta.

The interchange service performed by the Tionesta is similar to that by the trunk lines for industries served by them and there is no difference in the manner or extent of the service performed for affiliated and independent industries.

Joint rates and divisions apply to practically all freight moved, and where no joint rates are published the local class or commodity rates in effect from shipping point to junction points with connecting lines are applied. With the exception of short-haul traffic the junction-point rate of each of the connecting trunk lines is applied to all stations on the Tionesta. In the case of lumber or forest products the rate is blanketed over the district traversed by the Tionesta. The divisions received vary with the length of haul.

The Tionesta shows on its books an investment in road and equipment of \$679,229.91, as of December 31, 1918, distributed, \$505,876.91 to road, track, bridges, buildings, etc., and \$173,353 to equipment. After deducting the reserve of \$43,405.55 for accrued depreciation and adding the value of the materials and supplies on hand, \$32,817.32,

the apparent investment value is \$668,641.68. The road is being valued by us but no report has as yet been issued. For the years 1917 and 1918, owing to greatly increased operating expenses, the average net income was \$26,023.97, or about 3.9 per cent upon the valuation of \$668,641.68.

Upon the record we find the Tionesta Valley Railway to be a common carrier subject to the interstate commerce act which may lawfully participate in joint rates with other common carriers or have its switching charges on interstate shipments absorbed under appropriate tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable, and a complete and specific statement of any basis agreed upon must be filed with us immediately upon its adoption.

We have in former cases pointed out that the payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries. Upon consideration of the record we find in accordance with our holding in *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551, that the per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars.

We further find that the following arrangement between the Tionesta Valley and its trunk line connections with respect to the detention of foreign cars on the line of the former will be reasonable and proper for the future.

The Tionesta Valley and the respondent trunk lines connecting with the Tionesta Valley shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59 providing for assessment of charges for use and detention of cars except those at home on the tracks of the Tionesta Valley or the industries located thereon against the Tionesta Valley at the contemporaneous demurrage rates on cars delivered loaded and returned empty or delivered empty and returned loaded after the expiration of 72 hours' free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track; except that when, through no fault of the delivering line, such placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial carrier, such notice to contain

a statement of point of shipment, car initials and numbers, car contents, consignee, and if transferred in transit the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first eight days; in no case shall more than two credits be allowed accruing on any one car, nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named, charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty, charges for use and detention of cars at the contemporaneous demurrage rates per car per day or fraction of a day shall be collected, after the expiration of 24 hours' free time.

Under this arrangement shippers located on the Tionesta Valley would be accorded the same treatment in the matter of demurrage as those located on the lines of other common carriers, and the Tionesta Valley would be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between other lines and the industries served by them.

An appropriate order will be entered in No. 4181. No order is necessary in Investigation and Suspension Docket No. 414.

No. 11225.

LAWTON REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY.

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*Submitted January 15, 1921. Decided June 15, 1921.*

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Rate of 9 cents per 100 pounds charged on numerous shipments of crude petroleum, in carloads, from Junction City, Okla., to Lawton, Okla., during federal control found unreasonable. Reparation awarded.

*Clifford Thorne, Chester H. Lowry, and Walter R. Scott for complainant.*

*John F. Finerty, A. B. Enoch, and Alex. M. Bull for defendants.*

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued before us. We have reached conclusions differing from those suggested by the examiner.

Complainant is a corporation engaged in producing and refining petroleum. By complaint filed February 9, 1920, it alleges that a rate of 9 cents per 100 pounds charged by defendants for the transportation of numerous shipments of crude petroleum, in carloads, from Junction City, Okla., to Lawton, Okla., intrastate, from January 1, 1919, to September 29, 1919, inclusive, was unreasonable to the extent that it exceeded a rate of 7 cents per 100 pounds subsequently established. Only reparation is sought. Rates herein will be stated in cents per 100 pounds.

Lawton is in southwestern Oklahoma on the Chicago, Rock Island & Pacific and the St. Louis-San Francisco railways. Junction City is on the Rock Island 10.9 miles distant from Lawton. Under the Oklahoma intrastate distance scale the rate on crude petroleum, in carloads, for 10.9 miles was 4.2 cents prior to March 25, 1918. On that date, following a decree of the United States district court for the western district of Oklahoma enjoining the enforcement of certain Oklahoma intrastate rates, including those on crude petroleum, the Director General of Railroads established a distance scale under

which the rate for 10.9 miles became 5 cents. The rate was further increased on June 25, 1918, under general order No. 28, to 6.5 cents and again on August 24, 1918, to 9 cents. The latter rate was based on the former rate of 4.2 cents increased 10 per cent plus the uniform increase of 4.5 cents in all rates on petroleum and its products which was substituted for the 25 per cent increase under general order No. 28 upon the request of interested shippers and in order to restore the former rate relationships. On September 30, 1919, the rate was reduced to 7 cents in connection with a general revision of the rates on crude petroleum in the midcontinent field.

The decree above mentioned was entered March 15, 1918, at the conclusion of a suit to enjoin enforcement of certain rates prescribed by the Oklahoma corporation commission on the ground that they were confiscatory. It appears, however, that the court only considered the intrastate rates as a whole and had before it no evidence relating specifically to the rate attacked or to any rates on petroleum.

Defendants take the position that the 9-cent rate was manifestly not unreasonable, inasmuch as it was composed of a base rate only 10 per cent higher than one the enforcement of which had been enjoined, plus the uniform increase of 4.5 cents which complainant concedes was reasonable. They urge, furthermore, that reparation should not be awarded upon the basis of the subsequently established rate of 7 cents because that rate formed part of a general readjustment and also because former increases in the rate were offset by increases in the price of oil.

When the rate was increased to 6.5 cents complainant protested to the Rock Island, and following the increase to 9 cents the Western District Freight Traffic Committee recommended to the Director General that the former rate of 6.5 cents be reestablished. Complainant contends that the propriety of individual rates is not demonstrated by showing that the general increase of 4.5 cents on August 24, 1918, was reasonable as applied to rates on petroleum traffic as a whole and offered numerous rate comparisons and other evidence to show that the rate in question was unreasonable. Following the injunction proceeding above referred to, the Corporation Commission of Oklahoma upon complaint conducted an investigation into the reasonableness of rates on petroleum and petroleum products and prescribed a scale of distance rates on crude, fuel, gas, and road oil and on liquid asphalt which provided a rate of 6 cents for distances of 15 miles and over 10 miles. This scale of rates was made effective by the lines not under federal control but not by defendants herein.

Complainant compares the former rate of 9 cents and the present rate of 7 cents from Junction City and Lawton with various rates



on petroleum to or from refining points, the following among others:

From—	To—	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Junction City, Okla.....	Lawton, Okla.....	10.9	9	165.1
Do.....	do.....	10.9	7	128.4
Cherryvale, Kans.....	Coffeyville, Kans.....	16	8	100
Lusk, Wyo.....	Casper, Wyo.....	106.1	7	13
Big Muddy, Wyo.....	do.....	14.1	6.5	92.2
Parkerton, Wyo.....	do.....	18.2	6.5	71.4
Richmond, Calif.....	Oakland, Calif.....	18	6.5	72.2
San Francisco, Calif.....	Berkeley, Calif.....	18	7	77.8
El Segundo, Calif.....	Los Angeles, Calif.....	17	6.5	76.5
Florence, Colo.....	Minnequa, Colo.....	36	7.5	41.7
Wood River, Ill.....	East St. Louis, Ill.....	17.4	5.5	63.2
Whiting, Ind.....	Melrose Park, Ill.....	42.5	6.5	30.6

All of the rates cited apply for longer distances and are relatively lower than the rate attacked. The 9-cent rate was also materially higher than the distance rates contemporaneously maintained by defendants for like distances between points in Oklahoma on various other commodities. Among such rates are those of 6 cents on road oil and asphalt, 6.5 cents on grain, flour, and lumber, and 7.5 cents on cement, plaster, cotton seed, cottonseed meal, flaxseed, hay, lime, and castor beans. Complainant also cited lower specific rates on ores and certain other commodities for longer hauls between Oklahoma points, for example, rates on sulphuric acid in tank cars ranging from 5.5 to 7.5 cents for hauls from 10 to 20 miles and on zinc ore 6.5 to 7.5 cents for hauls of 97 to 170 miles. Most of the commodities named are of greater value than crude oil.

Our decision in *Atlantic Refining Co. v. Director General*, 58 I. C. C., 46, upon which defendants rely, was based upon a different situation and is not controlling in this case.

We find that the rate assailed was unreasonable to the extent that it exceeded 7 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to an award of reparation with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11024.

GUNNISON VALLEY SUGAR COMPANY

v.

DENVER & RIO GRANDE RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted December 10, 1920. Decided June 11, 1921.*

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Rates applicable on secondhand sugar-making machinery, in carloads, from Waverly, Wash., to Gunnison, Utah, found not unreasonable or otherwise unlawful. Complaint dismissed.

*M. H. Love and H. W. Prickett* for complainant.

*J. G. McMurtry* for Director General, as Agent, and Denver & Rio Grande Railroad and its receiver.

*A. C. Spencer, Geo. H. Smith, J. V. Lyle, H. A. Scandrett, and J. M. Souby* for Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

##### BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued before us.

Complainant is a corporation manufacturing sugar at Grove, near Gunnison, Utah. By complaint filed November 24, 1919, it alleges that the rate of \$1.21 charged by defendants on 48 carloads of secondhand sugar-making machinery, smokestacks, pipe, boilers and parts, pumps, tanks, engines, structural steel, and lime kiln, comprising the material from a dismantled sugar factory, shipped from Waverly, Wash., to Gunnison, between the latter part of October, 1917, and January 31, 1918, was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

The shipments averaged 61,665 pounds per car and moved over the Spokane & Inland Empire to Spokane, Wash., Oregon-Washington Railroad & Navigation and Oregon Short Line to Salt Lake City, Utah, and Denver & Rio Grande to Gunnison, 1,056 miles. Charges were collected at a combination rate of \$1.21, composed of

the class-A rates of 13 cents from Waverly to Spokane and 83 cents from Spokane to Salt Lake City, and a proportional commodity rate of 25 cents beyond. The latter rate was established by the Denver & Rio Grande at the request of complainant to apply on these shipments, but it appears that some of them moved before November 18, 1917, when it became effective and were undercharged. The rate from Salt Lake City to Gunnison applicable prior to that date was the class-A rate of 32 cents.

Reparation was sought to the basis of 70 cents, the aggregate of the class-D rates contemporaneously in effect. On exceptions complainant asks for reparation to the basis of 93 cents, composed of the rates charged from Waverly to Spokane and from Salt Lake City to Gunnison, and a rate of 55 cents from Spokane to Salt Lake City. The rate assailed yielded 22.9 mills per ton-mile and 70.66 cents per car-mile. A rate of 55 cents from Spokane to Salt Lake City, 885 miles, would yield 12.4 mills per ton-mile and 38.3 cents per car-mile, based upon the average weight of complainant's shipments. Complainant compares these earnings with the average of 24 cents per car-mile for an average haul of 206.88 miles on all traffic of the principal defendant lines for the year ended December 31, 1917.

Complainant contrasts the rates charged and the 70-cent rate sought with rates on new and secondhand machinery and other commodities in the same general territory. It shows that defendants and other carriers maintain rates lower than class A on new sugar-making machinery from certain points and that they have at times established commodity rates lower than class A for particular movements under circumstances similar to those connected with these shipments. Several specific examples are given of rates on machinery and material from dismantled sugar mills which were materially lower, distance considered, than those charged or asked on complainant's shipments. Defendants assert that the rates so used for comparison were missionary rates, established to increase their sugar traffic.

Complainant also refers to commodity rates on mining machinery in this general territory lower than the corresponding class rates. The terms "mining machinery" and "sugar-making machinery" embrace many articles of the same or substantially similar kind, and not infrequently the commodity rate applicable on sugar-making machinery is the same as or lower than that on mining machinery. In the absence of commodity rates, mining machinery takes the same class rates as sugar-making machinery. Complainant's contention that the rate from Spokane to Salt Lake City should not have exceeded 55 cents is based, in part, upon the fact that a commodity rate of 55 cents contemporaneously applied from Portland,

Oreg., to Salt Lake City on mining machinery and that it is customary for defendants to maintain a parity of rates from Portland and Spokane to Salt Lake City.

These shipments were unusual or sporadic and were properly subject to the class-rate basis. It is not shown that the class-A rates, as such, were unreasonable or that the classification rating was improper.

Upon this record we find that the rates applicable were not unreasonable or otherwise unlawful.

The complaint will be dismissed.

No. 11394.

A. B. ALPURN

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,  
BURLINGTON & QUINCY RAILROAD COMPANY.

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*Submitted December 23, 1920. Decided June 16, 1921.*

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Demurrage charges assessed at Omaha, Nebr., on certain cars of scrap iron moving under order-notify bills of lading found not to have been unreasonable or otherwise unlawful. Complaint dismissed.

*E. J. McVann and William Grodzinsky for complainant.*

*J. W. Weingarten and Kenneth F. Burgess for defendants.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case has been orally argued.

Complainant is a wholesale dealer in scrap metals at Omaha, Nebr. He alleges that the demurrage charges assessed at Omaha by the Chicago, Burlington & Quincy, hereinafter referred to as defendant, for the detention of 10 cars of scrap iron and scrap steel in May, June, and July, 1917, were excessive, unjust, and unreasonable. The prayer is for reparation.

The shipments originated in Montana and were consigned to the order of the Anaconda Copper Mining Company with directions to notify complainant. Two carloads arrived at Gibson, defendant's break-up yard for Omaha traffic, 2 miles from the Omaha freight station, on May 28 and May 30, 1917; the others on various dates between June 4 and June 27, 1917. Upon receipt of notices of arrival complainant gave instructions to switch the cars to Omaha, designating certain tracks theretofore used for placement of his cars when space was not available on the public team tracks. Defendant declined to comply with these instructions until the bills of lading were surrendered and held the cars under demurrage. On June 18 complainant surrendered the bills of lading covering the two cars that had arrived in May and gave written instructions to place them in his yard. The remaining cars were switched by

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defendant to Omaha and placed on a public team track on July 12. Complainant on July 14 surrendered the bills of lading covering these cars and gave instructions for placement in his yard. According to defendant, on June 18 and July 14, when these instructions were respectively received, delivery could not be made because of congestion in complainant's yard and the cars were therefore constructively placed two on June 20, six on July 14, and two on July 16. Due notice thereof was given to complainant.

Complainant contends (1) that no demurrage should have been assessed until the cars had been brought into Omaha, and (2) that no demurrage lawfully accrued after surrender of the bills of lading until actual placement had been made in his yard.

As to the first contention, complainant insists that it was the duty of defendant, upon request, to place the cars on tracks in Omaha before requiring surrender of the bills of lading, and that the tariff contained no provisions under which defendant could lawfully refuse to do so. He says that the only purpose in ordering the cars taken from Gibson yard was to obtain prompt delivery in complainant's yard after surrender of the bills of lading, and thus to avoid the accrual of interest on the amounts necessary to take up the drafts. The record indicates that cars had been held occasionally at Gibson after receipt of disposition orders, but that normally orders received by defendant up to 6 p. m. were carried out that night. Inasmuch as these were order-notify shipments, complainant's title thereto depended upon possession of the bills of lading properly indorsed, and defendant was justified in declining to accept disposition orders until the bills had been surrendered or other satisfactory assurance given. *Harlow, Trustee v. Washington Southern Ry. Co.*, 26 I. C. C., 511; *Roden Grocery Co. v. A. G. S. R. R. Co.*, 21 I. C. C., 469.

We recently found in *Reconsignment and Diversion Rules*, 58 I. C. C., 568, that to facilitate the movement of order-notify cars through hold yards to the place of unloading, if within the switching limits, carriers should accept disposition orders prior to their arrival without requiring the surrender of the bills of lading, providing the place designated for unloading is a public team track. If the car is to be unloaded elsewhere than on a public team track, surrender of the bill of lading or the execution of an indemnity bond or other satisfactory assurance may properly be required. In this case the cars were not to be unloaded on a public team track, but were to be held until other disposition orders were given and the bills surrendered, thus requiring an additional switching movement. Gibson yard is the natural and reasonable place for holding cars for Omaha pending designation of the place for unloading or surrender of the bills of lading, and defendant's refusal to carry out complainant's in-

structions, unaccompanied by the bills of lading or the execution of an indemnity bond or other satisfactory assurance, was not unreasonable or otherwise unlawful.

As to the second contention the evidence concerning the demurrage that accrued after surrender of the bills of lading is conflicting. It was assessed under a tariff rule providing for constructive placement and notice thereof—

when delivery of cars consigned or ordered to any other than public delivery tracks or industrial interchange tracks can not be made on account of the act or neglect of the consignee, or the inability of the consignee to receive.

Such notice was given. Complainant stated that his yard could accommodate from 36 to 40 cars and that at no time during this period was it filled to capacity. A witness for defendant familiar with the yard testified that not more than 15 cars could be placed therein for unloading, with 3 additional cars on the lead entering the yard. Defendant's daily yard check shows that on certain days in June and July there were 18 cars in the yard and on other days as few as 6, which, according to complainant, indicates available space at least during part of the time the demurrage was accruing. But other cars, varying in number from 8 to 21, were standing on tracks in the immediate vicinity awaiting placement. The individual cars were placed at particular points of unloading according to orders from complainant's foreman and complainant apparently failed to utilize the entire unloading capacity of his yard. The record does not justify a finding that defendant improperly assessed demurrage under its rule for constructive placement.

We find that the demurrage charges assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

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No. 11507.  
TEXAS COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted March 3, 1921. Decided June 16, 1921.*

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Rate on lubricating oil and paraffin wax, in carloads, from Port Arthur to Galveston, Tex., for export, found unreasonable. Reparation awarded.

*James L. Nesbitt* for complainant.

*John F. Finerty* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner. After oral argument and consideration of the record we have modified the conclusions recommended by him.

Complainant is a corporation engaged in the production and sale of petroleum and its products, with principal office at Houston, Tex. By complaint filed June 8, 1920, it alleges that the rates charged on 27 carloads of lubricating oil and paraffin wax shipped during September, October, November, and December, 1918, from Port Arthur to Galveston, Tex., for export to England, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates will be stated in cents per 100 pounds.

The oil moved in barrels and the wax in bags. The shipments averaged 55,896 pounds and moved in accordance with complainant's routing instructions over the Texas & New Orleans and the Galveston, Harrisburg & San Antonio, 156 miles. Charges were collected at the applicable fifth-class domestic rate of 29.5 cents, based on the short-line distance of 97 miles, except that on the shipments moved September 7, 19, and 24, 1918, a rate of 19 cents was apparently collected, resulting in outstanding undercharges.

The shipments were billed on domestic bills of lading bearing the notation "For Export \* \* \*," and were ultimately exported to England. Prior to June 25, 1918, export rates of 11.5 and 12.5 cents applied over the route of movement on lubricating oil and paraffin wax, respectively. On that date these rates were canceled, pursuant to general order No. 28 of the Director General of Railroads, and the domestic rates became applicable. Effective January 15, 1919, de-



fendant established an export rate of 16.5 cents and reparation is asked to the basis of this rate.

In support of its contention of unreasonableness, complainant refers to contemporaneous rates as follows: 16.5 cents from Port Arthur to New Orleans, La., 800 miles, applicable to both export and domestic shipments, in which rate the Texas & New Orleans and the Galveston, Harrisburg & San Antonio participated; 16.5 cents maintained over these lines from Port Arthur to Galveston on shipments billed for coastwise movement beyond that port; 24.5 and 43.5 cents applicable on export and domestic shipments, respectively, from Oklahoma points to Galveston, average distance approximately 600 miles; and an export and domestic rate of 22.5 cents from St. Louis, Mo., to New Orleans, 695 miles. Complainant also points out that the intrastate rate contemporaneously in effect from Port Arthur to Galveston over the route of movement was 19 cents.

Defendant contends that fifth-class distance rates are the normal rates for the transportation of petroleum and its products between Texas points. The rate assailed is compared with a rate of 41.5 cents contemporaneously in effect from points in Oklahoma to points in Texas, for distances over 150 miles and not in excess of 160 miles. Under the Shreveport scale prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, the maximum rate on petroleum oil for distances as great and greater than the distance covered by these shipments was 32.5 cents, including the increase of 4.5 cents effective August 1, 1918; and 32.5 cents from Hutchinson, Kans., to stations in Oklahoma for distances between 150 and 175 miles. Defendant referred to many other rates, both interstate and intrastate, with which the rate assailed compares favorably.

Defendant asserts that both the prior and present export rates between Port Arthur and Galveston were and are depressed by reason of the policy of maintaining these rates on a parity with the low export rates from Port Arthur to New Orleans.

Upon this record we find that the rate applicable was unreasonable to the extent that it exceeded 16.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11603.

## TUM-A-LUM LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CANADIAN PACIFIC  
RAILWAY COMPANY, ET AL.

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*Submitted March 28, 1921. Decided June 18, 1921.*

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Rate on sand from Umatilla to Helix, Oreg., and rates on coal from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada, to Naches, Eureka, and Mabton, Wash., moving during federal control, found not unreasonable. Complaint dismissed.

*J. B. Campbell* for complainant.

*W. A. Robbins* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

## By Division 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the lumber and fuel business, alleges that the rates charged during federal control on a carload of sand from Umatilla, Oreg., to Helix, Oreg., and on three carloads of coal from points in Utah and Canada to destinations in Washington, were unreasonable. We are asked to award reparation.

The shipment of sand moved July 16, 1918, and charges thereon were collected at the applicable combination rate of 6 cents per 100 pounds, composed of rates of 3 cents to Wallula, Wash., and 3 cents beyond. Reparation is asked to the basis of a rate of 5 cents. The shipments of coal moved between August 19, 1918, and December 16, 1919, from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada, to Naches, Eureka, and Mabton, Wash., respectively. Charges thereon were collected at the applicable combination rates of \$6.10, \$6.40, and \$7.80 per net ton. The rate of \$6.10 was composed of rates of \$5.10 to Yakima, Wash., and \$1 beyond; the rate of \$6.40 was composed of a rate of \$4.90 to Wallula and the class-D rate of \$1.50 beyond; and the rate of \$7.80 was composed of a rate of \$2.80 to Spokane, Wash., and the class-D rate of \$4.50 beyond. We are asked to award reparation to the basis of rates of \$5.80, \$6.10, and \$6.50, respectively.

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The separate components of the combinations in effect prior to June 25, 1918, except the rate from Bellevue to Spokane, were increased on that date by general order No. 28 of the Director General of Railroads. The latter rate was increased on that date pursuant to general order No. 28 and an appropriate order of the Board of Railway Commissioners for Canada. The components were increased by specific amounts, except the class-D rates, which were increased 25 per cent. On July 2, 1918, freight rate authority No. 10, issued by the Director General, provided that the rates on coal and sand as increased by general order No. 28 should be determined by adding to the combinations in effect on June 24, 1918, the specific increases authorized by that order. Complainant contends that the rates charged were unreasonable because of the fact that the increases of June 25, 1918, were added to the separate factors previously in effect instead of but once to the combinations. No other evidence was offered to show that the rates applicable were unreasonable. The rates charged compare favorably with rates referred to by defendants applicable on like traffic in the same territory.

Upon this record we find that the rates assailed were not unreasonable. The complaint will be dismissed.

62 I. C. C.

No. 11645.

SAPULPA REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted April 22, 1921. Decided June 24, 1921.*

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Rate on crude petroleum, in carloads, from Drace, Okla., to Sapulpa, Okla., during federal control, found not unreasonable. Complaint dismissed.

*George L. Mann* for complainant.

*L. P. Nash* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation refining petroleum at Sapulpa, Okla., alleges that the rate charged by defendant on 502 carloads of crude petroleum which moved from Drace, Okla., to Sapulpa, Okla., between June 25 and August 23, 1918, was unreasonable to the extent that it exceeded the rate of 12 cents subsequently established. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The shipments moved intrastate over the St. Louis-San Francisco via Tulsa, Okla., 89.4 miles. Charges were collected at the applicable commodity rate of 14 cents. Prior to March 24, 1918, a distance scale of rates, established by the Corporation Commission of Oklahoma, was applicable on intrastate traffic, and the rate thereunder for 89.4 miles was 7.6 cents. On March 25, 1918, that scale was superseded by a commodity distance scale initiated by the Director General of Railroads, following an injunction granted by the United States district court for the western district of Oklahoma, which prevented the state commission from further enforcing its order affecting such rates. Under the latter scale the rate became 11 cents. It was further increased to 14 cents on June 25, 1918, pursuant to general order No. 28 of the Director General. By freight rate authority No. 96 the Director General ordered the substitution of a flat increase of 4.5 cents for the 25 per cent increase authorized under general order No. 28; and by freight rate authority No. 226 the rates

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in effect prior to March 25, 1918, were ordered increased 10 per cent. Both these changes were made effective August 24, 1918, and the rate then became 18 cents. On September 30, 1919, the rate was reduced to 12 cents, pursuant to freight rate authority No. 11996, which provided for the publication of a distance scale of rates on crude petroleum and fuel and road oil, in carloads, applicable on intrastate traffic in Oklahoma.

Complainant compares the rate assailed with rates, which were not contemporaneous, on the same commodity for similar or greater distances from points in Oklahoma to points in other states and on interstate traffic between points in Oklahoma. The comparison, as a whole, is not unfavorable to the rate assailed.

The fluctuations were due to a general readjustment of rates on petroleum and its products throughout the entire country. In *Atlantic Refining Co. v. Director General*, 58 I. C. C., 46, we said:

In making the increases under General Order No. 28 the President, through the Director General of Railroads, was meeting a public need for additional revenues as he certified in that order. In readjusting the resulting rates on petroleum and its products at the instance of the interested shippers he exercised an authority and discretion recognized by the federal control act. Where readjustments have been initiated by carriers we have found that exercise of their judgment in good faith and within reasonable limits should not be at peril of liability for reparation, that the awarding of reparation by no means necessarily follows the reduction of a rate by their voluntary action, and have denied reparation following the principle announced in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 48; *Boardman Co. v. S. P. Co.*, 87 I. C. C., 81, 87, and in other cases involving reparation where general rate adjustments have been made.

Following that decision and upon this record we find that the rate assailed was not unreasonable. An order dismissing the complaint will be entered.

No. 11882.  
ARMAND L. DE JEAN  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted February 25, 1921. Decided June 23, 1921.*

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Rate on compressed cotton, in square bales, any quantity, from Opelousas, La., to Houston, Tex., found unreasonable. Reparation awarded.

*W. M. Barrow* for complainant.

*F. A. Langhoff* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a dealer in cotton at Opelousas, La., alleges that the rate of 66 cents charged by defendant on 300 square bales of compressed cotton, shipped during October and November, 1919, from Opelousas to Houston, Tex., was unreasonable to the extent that it exceeded 47 cents, and unjustly discriminatory and unduly prejudicial. We are asked to award reparation. Rates are stated in cents per 100 pounds, and are those applicable to shipments in any quantity.

The shipments moved through Lafayette, La., over Morgan's Louisiana & Texas, the Louisiana Western, and the Texas & New Orleans. Charges were collected at the applicable New Orleans, La., combination commodity rate of 66 cents.

There were contemporaneously in effect from Opelousas to Houston commodity rates of 47 cents on compressed cotton in round bales and Luce compressed cotton, and of 57 cents on uncompressed cotton in square bales; and to Galveston, Tex., through Houston, over the route of movement, a joint commodity rate of 47 cents on compressed cotton in square bales.

The tariff naming the latter rate contained a provision, in accordance with rule 77 of our Tariff Circular 18-A, that upon reasonable request the lower rate to the more distant point would be established at intermediate points on one day's notice. This was a substantial compliance with the long-and-short-haul provision of the fourth section. The shipper did not make application for the

47-cent rate prior to this movement, as defendant accepted prepaid charges based on that rate. The consignee at Houston paid the difference between the charges prepaid and those applicable at the rate of 66 cents, and was reimbursed therefor by complainant. Subsequently the 47-cent rate was established to Houston.

Defendant urges that the lower rate to Galveston was protected by a fourth section application, and that the subsequent establishment of that rate to Houston does not afford a basis for an award of reparation.

It is not shown that complainant sustained damage by reason of the alleged unjust discrimination or undue prejudice.

We find that the rate assailed was unreasonable to the extent that it exceeded 47 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

62 I. C. C.

No. 11946.  
TUFFLI BROTHERS PIG IRON & COKE COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

*Submitted April 21, 1921. Decided June 23, 1921.*

Transportation charges on a carload of smithing coal from Douglas, W. Va., to Chicago, Ill., reconsigned to Oakdale, Calif., and subsequently to Los Angeles, Calif., found applicable and not unreasonable. Complaint dismissed.

*J. Scheele* for complainant.

*Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in smithing coal at St. Louis, Mo., alleges that unjust and unreasonable charges were collected on a carload thereof shipped January 3, 1920, from Douglas, W. Va., to Los Angeles, Calif. We are asked to award reparation.

The shipment was originally consigned to Chicago, Ill., and moved to that point over the Western Maryland and Baltimore & Ohio. It was there reconsigned to complainant's order, Oakdale, Calif., "notify Houghs Brothers," and moved over the Chicago & Alton to Kansas City, Mo., Union Pacific to Ogden, Utah, and Southern Pacific beyond. It was placed for unloading on the team track at Oakdale, but the bill of lading was not taken up. Thereupon complainant reconsigned it to Los Angeles to which it moved over the Southern Pacific. Charges were collected at a commodity rate of \$2.60 per net ton to Chicago, a proportional commodity rate of \$12.10 per net ton thence to Oakdale, and the class-D rate of 31.5 cents per 100 pounds beyond. At Oakdale a reconsignment charge of \$5 and certain demurrage charges, not here assailed, were assessed.

Complainant does not attack the reasonableness of the applicable charges, but contends that the \$12.10 rate from Chicago to Oakdale also applied over the route of movement through Oakdale to Los



Angeles, and that reconsignment at Oakdale at that rate was authorized by the terminal tariff of the Southern Pacific. Subject to certain charges and conditions, the terminal tariff authorized reconsignment at the through rate, but rule 5(a) thereof provided that only one change in destination would be permitted after the car left the initial billing point. As stated, two changes in destination were made after this shipment left the original billing point.

We find that the charges assailed were applicable and not unreasonable. The complaint will be dismissed.

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No. 11805

ALUMINUM ORE COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted March 30, 1921. Decided June 23, 1921.*

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Rate on fluorspar, in carloads, from Wagon Wheel Gap, Colo., to East St. Louis, Ill., found not unreasonable. Complaint dismissed.

*E. A. Jack* for complainant.

*James M. Chaney* for defendant.

REPORT OF THE COMMISSION.

DIVISION 8, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 8:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing alumina at East St. Louis, Ill., alleges by complaint filed September 7, 1920, that the rate charged by defendant on 12 carloads of fluorspar, shipped between July 8, 1918, and February 12, 1920, from Wagon Wheel Gap, Colo., to East St. Louis, Ill., was unreasonable. Reparation is asked. Rates will be stated in cents per 100 pounds.

The shipments moved over lines operated by defendant and charges were collected at the applicable combination commodity rate of 37 cents, composed of rates of 12.5 cents to Minnequa, Colo., and 24.5 cents beyond. The rate charged was that found reasonable in *American Fluorspar Co. v. Director General*, 56 I. C. C., 267, plus the in-

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crease made under general order No. 28 of the Director General of Railroads. Complainant contends that it was unreasonable to the extent that the factor to Minnequa exceeded 11 cents.

Prior to June 25, 1918, the rate on fluorspar, in carloads, from Wagon Wheel Gap to Minnequa was 10 cents. On that date, under general order No. 28, it was increased to 12.5 cents. Effective February 29, 1920, the Denver & Rio Grande, the originating carrier, under freight rate authority No. 8016 of the United States Railroad Administration, reduced the rate to 11 cents and published in connection therewith a note stating that the rate had been advanced erroneously under general order No. 28. Complainant's claim for reparation is based upon this tariff note.

Defendant states that the reduction was made on an erroneous assumption that the increase of 1 cent authorized under general order No. 28 on broken, crushed, or ground stone should have been applied on fluorspar instead of the 25 per cent increase; that the tariff note referred to was incorrect; and that the reduction itself was an error which was corrected on August 22, 1920, when the rate was again increased to 12.5 cents.

Complainant admits that under the terms of general order No. 28 the rate should have been increased to 12.5 cents. We find that the rate assailed was not unreasonable.

The complaint will be dismissed.

62 I. C. C.

No. 11353.

TRAFFIC BUREAU, CHAMBER OF COMMERCE,  
PHOENIX, ARIZ., ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted February 12, 1921. Decided May 19, 1921.*

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Rate on apples, in carloads, from Watsonville, Calif., to Phoenix, Ariz., found unreasonable. Reasonable maximum rate prescribed and reparation awarded.

*Roland Johnston* for complainants.

*F. A. Jones* for Arizona Corporation Commission, intervener.

*Fred H. Wood, James R. Bell, C. W. Durbrow, and Elmer Westlake* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization composed of shippers and citizens of Phoenix, and John F. Barker Produce Company, a corporation engaged in the wholesale fruit and produce business at Phoenix. By complaint filed March 31, 1920, they allege that the rate charged for the transportation of a carload of apples from Watsonville, Calif., to Phoenix during March, 1920, was unjust, unreasonable, and unduly prejudicial. We are asked to prescribe a reasonable and nonprejudicial rate for the future and to award reparation on all shipments moving subsequent to February 29, 1920. The Arizona Corporation Commission intervened on behalf of complainants. Rates will be stated in amounts per 100 pounds, and do not include the general increase authorized by us on July 29, 1920.

Phoenix is served by the Arizona Eastern, a subsidiary of the Southern Pacific, and by a branch line of the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe. The shipment moved in what is known as Pacific freight tariff bureau territory, over the Southern Pacific to Maricopa, Ariz., and Arizona Eastern beyond,

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825.6 miles. The applicable commodity rate was \$1.095, but charges were collected at a rate of \$1.18 for which no tariff authority appears. The record indicates that prior to the hearing defendants tendered refund of the overcharge.

Complainants contend that as apples, in carloads, generally move on class-C rates in Pacific freight tariff bureau territory, the rate assailed should not exceed the contemporaneous class-C rate of 81.5 cents applying from San Francisco, Calif., and points grouped therewith. The consolidated classification provides fifth-class rating on apples, in carloads, in western classification territory. An exception sheet, to which defendants are parties, substitutes class C for the classification rating in Pacific freight tariff bureau territory. The individual tariffs naming rates from California to Arizona points contain exceptions to the consolidated classification and exceptions which restore as to that territory the fifth-class rating provided by the classification proper.

Defendants explain that possibly 25 years ago the Southern Pacific, in order to eliminate the expense of publishing specific commodity rates, inaugurated the policy of according class-C rates to fresh fruits and vegetables, in carloads, moving intrastate in California. They state that those commodities move in considerable volume for relatively short distances in California, and urge that the circumstances and conditions attendant upon the establishment of this rate basis in California were wholly unlike those which existed in the case of rates from California to Arizona.

Complainants introduced in evidence the subjoined table, which compares the revenue per car, per car-mile, and per ton-mile under the rate to Phoenix with the revenue yielded by specific commodity rates on apples from Watsonville to certain other points:

From Watsonville to—	Distance.	Minimum weight.	Rate.	Revenue.		
				Per car.	Per car-mile.	Per ton-mile.
	Miles.	Pounds.			Cents.	Miles.
Phoenix, Ariz.....	825.6	25,000	\$1.095	\$284.70	34.5	26.5
Tuma, Ariz.....	624	30,000		436.11	32.8	26.5
Nogales, Ariz. <sup>1</sup> .....	942	30,000		202.50	32.5	21.6
Fort Huachuca, Ariz. <sup>2</sup> .....	965	30,000		312.00	32.1	22.1
Bisbee, Ariz. <sup>3</sup> .....	985	30,000		312.00	32.2	21.6
Rio Grande, N. Mex.....	1,186	30,000	1.04	312.00	31.7	21.1
			1.04		30.8	17.5

<sup>1</sup> Actual weight of shipment.

<sup>2</sup> Branch-line point on Southern Pacific.

<sup>3</sup> Branch-line point on El Paso & Southwestern.

The rate of \$1.04 included in the above comparison is blanketed as to destination points on the main line of the Southern Pacific from Maricopa, Ariz., to Rio Grande, approximately 895 miles, and is published to Nogales, a branch-line point 66 miles from Tucson,

Ariz.; on the El Paso & Southwestern it applies to main-line and branch-line points, such as Fort Huachuca, Fairbank, Benson, Bisbee, Douglas, and Rodeo; from San Francisco group points on the Santa Fe the same rate is blanketed as to destination points from Pan, Ariz., to Albuquerque, N. Mex., approximately 425 miles; and it applies to certain points on the Arizona & New Mexico. It does not, however, apply to Arizona Eastern points or to destinations on the branch line of the Santa Fe extending from Ash Fork to Phoenix. Defendants assert that a rate of \$1.09 on apples, in carloads, San Francisco to El Paso, which was forced by market and carrier competition from the east, produced the blanket rate of \$1.04 to intermediate points in Arizona and New Mexico. They characterize the rates to Southern Pacific stations, Yuma to El Paso, with the possible exception of Tucson, as paper rates.

Defendants urge that apples are of perishable character; require expedited service in refrigerator equipment; do not load heavily; and move in small volume to Phoenix. From three to five carloads move monthly from Watsonville to Phoenix. The record is silent as to the movement under the blanket rate.

We find that the rate applicable was unreasonable to the extent that it exceeded \$1.04 per 100 pounds, minimum 30,000 pounds; and that the present rate is, and for the future will be, unreasonable to the same extent subject to the increase authorized in *Increased Rates*, 1920, 58 I. C. C., 220. We further find that complainant, John F. Barker Produce Company, made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Details of shipments made subsequent to the hearing may be included in the reparation statement if accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges thereon were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

An order for the future will be entered.

HALL, *Commissioner*, dissenting in part:

I am in accord with this report except as it awards reparation on shipments which may have moved since the complaint was filed. We have no evidence of such shipments, of injury to complainants, or of resulting damage. I therefore dissent for reasons stated in connection with *American Fork & Hoe Co. v. St. L. & S. F. R. R. Co.*, 60 I. C. C., 85, 90.

No. 11625.<sup>1</sup>

SHEFFIELD FARMS COMPANY, INCORPORATED,  
v.  
DIRECTOR GENERAL, AS AGENT.

Submitted December 27, 1920. Decided June 16, 1921.

Rates on ice, in carloads, from Fleischmann's, N. Y., to Grand Gorge and Hobart, N. Y., during federal control, found unreasonable. Reparation awarded.

*Ernie Adamson and Almy, Van Gordon & Evans* for complainant.  
*Carmalt, Hagerty & Wheeler* and *Alfred G. Hagerty* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ to some extent from those proposed by him.

Complainant, a corporation engaged in the milk and dairy products business at Grand Gorge and Hobart, N. Y., alleges that the rates from Fleischmann's, N. Y., on 32 carloads of natural ice to Grand Gorge, and on 5 carloads to Hobart, in March, 1919, were unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved during the period between March 11 and March 17, 1919, over the Ulster & Delaware from Fleischmann's to Grand Gorge and Hobart, 21.4 and 33.4 miles, respectively. They aggregated 2,400,000 pounds and 400,000 pounds, respectively. Charges were collected in the sum of \$3,380 at the applicable sixth-class rates, minimum 40,000 pounds, of 12 cents to Grand Gorge and 12.5 cents to Hobart. One car contained 40,000 and two cars contained 50,000 pounds each. All the others loaded in excess of 60,000 pounds.

Prior to the movement complainant requested defendant to establish lower rates on this traffic, and shortly after the shipments moved, on March 21, 1919, commodity rates of 2.5 cents, minimum 60,000

<sup>1</sup> This report also embraces No. 11625 (Sub-No. 1), Same v. Same,  
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pounds, were established from Fleischmann's to both destinations. The claim for reparation was submitted to us by defendant on our special docket for authority to make refund based upon the subsequently established rates.

Ordinarily ice for use in complainant's plants is obtained from ponds adjacent thereto. Because of the mild weather during the season in question, the ice on these ponds was too thin to harvest, and it became necessary to obtain a supply from Fleischmann's. Future movement will depend upon weather conditions.

Complainant cites lower contemporaneous rates on other low-grade commodities for like and greater distances between neighboring points. It also refers to rates on ice from and to other near-by points, established after this movement, with which the subsequently established rate of 2.5 cents compares favorably. From June 25, 1918, until September 1, 1920, a rate of 2 cents, minimum \$15 per car, was blanketed from Halcottville and South Gilboa to stations on the Ulster & Delaware, including West Davenport, for distances up to 50.2 miles. This and the 2.5-cent rate from Fleischmann's to Grand Gorge and Hobart, plus the general increase of 1920, are still in effect. Grand Gorge and Hobart are intermediate between Halcottville and West Davenport. Fleischmann's is 8.9 miles south and east of Halcottville. Comparison is made also of the rates assailed with a contemporaneous rate of 2.5 cents on ice between points in Pennsylvania on the Ontario & Western for distances greater than those between the points here considered, and a contemporaneous rate on ice of \$9 per car between points on the Delaware & Hudson for distances up to 75 miles.

The shipments to Grand Gorge and Hobart averaged 75,000 pounds and 80,000 pounds per car, respectively, and the rates charged yielded averages of \$4.21 and \$2.99 per car-mile, respectively; the rate of 2.5 cents would yield 87.6 cents and 59.9 cents per car-mile, respectively.

We find that rates assailed were unreasonable during federal control to the extent that they exceeded 2.5 cents per 100 pounds, minimum 60,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$2,680, with interest.

An appropriate order will be entered.

**EASTMAN, Commissioner, dissenting:**

In his proposed report the examiner recommended that the rate of 12 cents charged on the shipments to Grand Gorge be found

S. L. C. C.

unreasonable to the extent that it exceeded 6 cents and that the rate of 12.5 cents charged on the shipments to Hobart be found unreasonable to the extent that it exceeded 6.5 cents. No exceptions were filed, and it does not seem to me that there is good reason for awarding reparation on the basis of still lower rates. These were emergency shipments and the Ulster & Delaware operates in mountainous country under difficult transportation conditions.

621. C. C.



No. 10929.

## GRAIN &amp; HAY EXCHANGE OF PITTSBURGH

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

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Submitted October 18, 1920. Decided July 1, 1921.

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Rules providing for the assessment of a charge for the reconsignment of car-load shipments of track grain held at Pittsburgh, Pa., for inspection and grading, found unjust, unreasonable, and unduly prejudicial. Reparation awarded.

*C. G. Burson, J. A. A. Geidel, and Frank H. Baldy* for complainant.

*Guernsey Orcutt, James Stillwell, John F. Finerty, and Alexander M. Bull* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation organized for the purpose of promoting the interests of the grain and hay trade at Pittsburgh, Pa. By complaint filed October 6, 1919, as amended, it alleges that defendants' reconsignment rules and charge are unjust, unreasonable, and unduly discriminatory in violation of sections 1, 2, and 3 of the act to regulate commerce and of section 10 of the federal control act, to the extent that a reconsignment charge of \$2 per car was assessed at Pittsburgh on and after February 1, 1915, on shipments of track grain, while a like charge was not contemporaneously imposed at other markets with which Pittsburgh competes. Reparation on behalf of complainant's members named in the complaint and removal of the alleged discrimination are asked.

Track grain is described as grain held in cars for the purpose of official inspection and grading and thereupon reconsigned in the same cars to final destination, as distinguished from grain held in elevators. Under the grain standards act no grain may be sold by grade unless inspected and graded by an inspector licensed in accord-

ance with that act. Prior to February 1, 1915, defendants permitted reconsignment of track grain without charge at Pittsburgh under the conditions prescribed in the tariffs. On that date a charge of \$2 per car was imposed, in addition to the rate from point of origin to final destination, on shipments of track grain reconsigned to points outside the Pittsburgh switching district. Defendants made no attempt to justify this change.

Defendants participated contemporaneously in tariffs permitting reconsignment without charge of track grain at Indianapolis, Ind., Cleveland and Toledo, Ohio, and points in the Chicago, Peoria, and Pekin (Ill.) districts, if reconsigned within 48 hours after the first 7 a. m. following notice to the original consignee of arrival of car at the reconsignment point. The Baltimore & Ohio also permitted free reconsignment of track grain at Albion, Kimmel, and Napanee, Ind., and Defiance, Deshler, Fredericktown, Lexington, Mansfield, Mount Vernon, Tiffin, and Warren, Ohio.

Charges for reconsignment of grain held for official sampling and grading were before us in the *Reconsignment Case*, 47 I. C. C., 590, and *Reconsignment Case No. 3*, 53 I. C. C., 455. In the former we said at page 641: "We are not convinced that the carriers should except these commodities from the application of the uniform rules." In so far as the charges proposed for reconsignment of grain were equal to or lower than those approved in considering the general rules, we found them not unreasonable. In the latter case we considered certain fifteenth section applications and tariffs under suspension by which the application was proposed of graduated charges, ranging from \$2 to \$5 per car, for the setting-out service. The practices of carriers in various sections of the country and the modifications proposed since early in 1917 in grain reconsignment rules were reviewed in that report. Upon the more complete record we found that the service is primarily one which by long continued general custom and usage had been treated as covered by the line-haul rate, and refused to sanction the imposition of a charge for reconsignment of grain held for official inspection, if ordered reconsigned within the time limit prescribed in the rules therein found just and reasonable. Defendants have since filed tariffs in accordance with this decision eliminating the charge complained of at Pittsburgh. The only issue for determination is that of reparation on past shipments.

Defendants contest complainant's right to maintain a claim for reparation in this proceeding on the ground that it did not itself pay any of the charges complained of and is not empowered by its charter to bring suit in behalf of its members. The prayer of the complaint names specifically the members of complainant's organization who paid the charges and asks that they be awarded repara-

tion. The members so named are co-complainants with the Pittsburgh Hay & Grain Exchange, although not styled such in the caption of the complaint. *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 41 I. C. C., 480.

Reparation is asked for the collection since February 1, 1915, of the alleged unlawful charge. Some of the claims are barred by the statute of limitations. Section 206 (f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control. *Lazarus v. New York Cent. R. R.*, 271 Fed., 93. The claims of complainant's members named in the complaint based on causes of action which arose within two years prior to the period of federal control are not barred by the statute.

Complainant introduced no evidence bearing upon the reasonableness of the charge imposed but maintained that the question of its reasonableness was determined in *Reconsignment Case No. 3, supra*. Complainant shows that at Chicago, Cleveland, Toledo, Indianapolis, and practically every other important grain market on defendants' lines in central territory which maintains an inspection bureau, no reconsignment charge was assessed on track grain. The manner of handling the shipments and the method of inspecting at these points are said to be similar to those at Pittsburgh. East of Pittsburgh there were no points nearer than Baltimore, Md., and Philadelphia, Pa., where grain might be sampled and graded by inspectors under federal license. Witnesses for complainant testified that the only competition met at Pittsburgh is that from markets in central territory.

The bulk of the shipments received by complainant's members originated at country stations in Ohio, Indiana, Illinois, and Michigan. Some grain, not exceeding 20 per cent of the total amount, originated at Chicago and other primary markets, and was reinspected upon arrival at Pittsburgh. The shipments were reconsigned to points in Pennsylvania and other states. It is contended that complainant's members encountered severe competition, both in buying and in selling, from markets not subjected to a reconsignment charge. The grain was sold at a delivered price, as in the competing markets. Complainant asserts that because of this keen competition the Pittsburgh dealer must either absorb the reconsignment charge, thereby reducing his profit from 10 to 30 per cent according to the commodity, or lose the sale.

Defendants present a history of the grain reconsignment rules and assert that they have acted in accordance with our opinions and

orders since our decision in the *Reconsignment Case, supra*, and are therefore absolved from all liability on reparation claims. But the reconsignment charge was collected at Pittsburgh, and not at the grain markets in central territory, before as well as after December 24, 1917, date of that decision; and we found in *Reconsignment Case, No. 3, supra*, decided June 24, 1919, that under certain conditions no charge should be assessed on grain held for official inspection. Defendants show that while reconsignment of track grain was permitted without charge at the markets named by complainant, at many other points charges were applied under general reconsignment tariffs, and direct attention to the fact that no points directly east of Pittsburgh were accorded such reconsignment without charge. They assert that numerous shipments were consigned to those points, reconsigned thereafter at charges published in the general reconsignment tariffs, and sold in competition with grain reconsigned from Pittsburgh. They say that the transportation conditions attending placement and removal of cars at the various hay and grain yards in Pittsburgh are very difficult and introduced evidence showing the switching movements required.

Upon consideration of the record we are of opinion and find that the rules under which a reconsignment charge was assessed on track grain at Pittsburgh were unjust and unreasonable; and that it was unduly prejudicial to complainant's members to maintain and apply those rules at Pittsburgh while contemporaneously permitting reconsignment without charge at Cleveland and other competitive points in central territory under like circumstances. We further find that shipments were made as described; that complainant's members, co-complainants herein, paid and bore the charges thereon; that they have been damaged by the payment of the reconsignment charge under the rules herein found unreasonable in the amount of \$2 per car on track grain reconsigned within 48 hours after the first 7 a. m. following notice of arrival at the reconsignment point in Pittsburgh; and that they are entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No order for the future is necessary.

62 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 1316.**  
**CARLOAD MINIMUM WEIGHT ON SUGAR BETWEEN**  
**WESTERN POINTS.**

*Submitted June 10, 1921. Decided July 13, 1921.*

Proposed reduction in the carload minimum weight on sugar from points in Colorado, Idaho, Kansas, Nebraska, and Utah, to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

*L. C. Mahoney and F. K. Crosby* for respondents.

*F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company.

*S. D. Boylston* for American Beet Sugar Company and Holly Sugar Corporation.

*E. R. Griffin* for Great Western Sugar Company.

*Nuel D. Belnap, Luther M. Walter, and John S. Burchmore* for California & Hawaiian Sugar Refining Corporation, Western Sugar Refinery, Spreckels Sugar Company, Union Sugar Company, and Alameda Sugar Company, protestants.

**REPORT OF THE COMMISSION.**

DIVISION 3, COMMISSIONERS MEYER, EASTMAN, AND CAMPBELL.

*CAMPBELL, Commissioner:*

By schedules filed to become effective April 1, 1921, respondents proposed to reduce from 60,000 to 33,000 pounds the carload minimum weight on sugar from producing points in Colorado, Idaho, Kansas, Nebraska, and Utah, hereinafter referred to as Colorado territory, to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma. Upon protest of sugar producers and refiners on the Pacific coast, whose competitors would use the proposed minimum, the schedules were suspended until August 29, 1921.

Prior to February 29, 1920, a minimum of 33,000 pounds was applicable on sugar from Colorado territory and from Louisiana and Texas points to points in western trunk line territory, to Missouri River cities, Sioux City, Iowa, to Kansas City, Mo., inclusive, and to points in Kansas, Nebraska, and Illinois, together with points in Indiana taking the Chicago rates, but on that date it was increased

to 60,000 pounds under a freight rate authority of the Director General of Railroads. Until November 15, 1920, a carload minimum of 33,000 pounds also applied from Colorado territory to points in Arkansas and Oklahoma, when it was increased to 60,000 pounds. This increase removed a departure from the long-and-short-haul rule of the fourth section, which was due to the fact that many of the lines serving Arkansas and Oklahoma from Colorado territory operate through Nebraska, Kansas, and Missouri River cities, where the higher minimum obtained. During federal control a minimum of 33,000 pounds was applicable from Louisiana and Texas points to points in southwestern territory, including Arkansas and Oklahoma, and the Director General sought to increase it to 60,000 pounds. However, objections were raised by the Louisiana and Texas producers and refiners and the 33,000-pound minimum was continued in effect. As a result of the maintenance of the 60,000-pound minimum from Colorado territory and the 33,000-pound minimum from Louisiana and Texas to points in Arkansas and Oklahoma, the producers and refiners in Colorado territory complained to the carriers that they were being discriminated against. In order to place them on the same basis as the Louisiana and Texas interests, respondents proposed by the tariff under suspension to reduce the minimum from Colorado territory to 33,000 pounds, and in order to avoid the maintenance of a lower minimum from Colorado territory to points in Arkansas and Oklahoma than from that territory to intermediate points, they also proposed to reduce to 33,000 pounds the minimum applicable to Missouri River cities and points in Kansas and Nebraska.

Sugar will easily load to 60,000 pounds in a standard car and that minimum applies generally in the west, except from Louisiana and Texas to points in Louisiana, Texas, Arkansas, and Oklahoma, and from Texas to points in Colorado. It was testified on behalf of the producers and refiners in Colorado territory that the present minimum of 60,000 pounds is entirely satisfactory to them provided the same minimum applies from all points of production. They say, however, that so long as the 33,000-pound minimum is applied from Louisiana and Texas points to Arkansas and Oklahoma they will be handicapped in marketing their product in those states.

Protestants seriously object to the reduction of the minimum from Colorado territory without a reduction from the Pacific coast. They are subjected to the same disadvantage in Arkansas and Oklahoma as are the producers and refiners in Colorado territory, and would be placed at an additional disadvantage if the minimum weight were reduced from the Colorado territory without a corresponding reduction from the Pacific coast. These protestants have recently filed

a complaint, Docket No. 12807, *California & Hawaiian Sugar Refining Corp. v. A., T. & S. F. Ry. Co.*, in which they ask us to establish a uniform minimum weight for application in connection with commodity rates on sugar throughout the United States.

To permit the tariff under suspension to become effective would remove some of the alleged undue prejudice to which Colorado territory producers and refiners are subjected but would place the Pacific coast refiners and producers at a greater disadvantage, and also would place the Texas and Louisiana producers and refiners at a disadvantage in Kansas, Nebraska, and at the Missouri River cities, by continuing the minimum of 60,000 pounds from Texas and Louisiana to those points while establishing a minimum of 33,000 pounds from Colorado territory.

Respondents could have secured a determination as to the propriety of the existing adjustment by asking us to fix 60,000 pounds as a minimum from Louisiana and Texas, but they elected to correct the situation destructively rather than constructively. The proposal seems inconsistent with the general campaign for increased carloading and other efforts toward greater efficiency. The provisions of section 15a of the interstate commerce act as to efficient and economical management should be kept constantly in mind.

We find that the proposed reduction has not been justified and an order will be entered requiring the cancellation of the suspended schedules and discontinuing the proceeding.

## NEW ENGLAND DIVISIONS.

No. 11756.

BANGOR &amp; AROOSTOOK RAILROAD COMPANY ET AL.

v.

ABERDEEN &amp; ROCKFISH RAILROAD COMPANY ET AL.

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Submitted April 23, 1921. Decided July 6, 1921.

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Upon complaint that divisions of joint rates on property transported between points on the lines of defendants and points in New England on the lines of complainants were and are violative of certain provisions of the interstate commerce act. *Held*, That:

1. No basis is afforded for a valid prescription of divisions, but it is shown that just, fair, and equitable divisions can not, in many instances, flow from existing arrangements.
2. Record held open for submission of proposed readjustments.

*Charles F. Choate, jr., Wilbur La Roe, jr., E. G. Buckland, James Garfield, Charles H. Blatchford, W. A. Cole, William L. Barnett, J. C. Sweeney, and Henry Hart* for complainants.

*F. I. Gowen, Clyde Brown, W. C. Noyes, H. A. Taylor, A. H. Elder, Henry Wolf Bickel, H. T. Newcomb, John C. Bills, N. S. Brown, W. S. Bronson, Bird M. Robinson, B. B. Cain, Allen McCarty, D. Lynch Younger, Charles J. Rixey, jr., W. N. McGehee, Theodore Reath, E. W. Knight, and W. H. T. Loyall* for defendants.

## REPORT OF THE COMMISSION.

CLARK, *Chairman*:

On behalf of certain interstate steam railroads<sup>1</sup> operating almost entirely within New England it is alleged, in effect, that divisions accruing to them out of the joint freight rates increased pursuant to *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex Parte 74*, between points in New England on their lines and all other points in the United States and adjacent foreign countries, particularly the Dominion of Canada, were and are in violation of

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<sup>1</sup> Bangor & Aroostook Railroad Company; Boston & Maine Railroad; Central New England Railway Company; Central Vermont Railway Company; Maine Central Railroad Company; New York, New Haven & Hartford Railroad Company; Rutland Railroad Company; and their subsidiaries and operated lines.



paragraph (4), section 1, and paragraph (6), section 15, of the interstate commerce act.<sup>3</sup>

We are asked (a) to prescribe just, reasonable, and equitable divisions for the future; (b) to require the cancellation of all joint rates and charges on traffic not moving entirely within the United States, or to authorize such other action as shall assure just, reasonable, and equitable compensation to the parties for their services in connection with such traffic; (c) to determine what would have been the just, reasonable, and equitable divisions of all joint rates and charges participated in by any of the parties hereto since the filing of the complaint; (d) to require adjustment to be made in accordance therewith; and (e) to determine a just and proper allocation among the complainants of such increased revenue as may be awarded to them.

Complainants urge that the divisions be treated "as a whole," not individually; that is, that blanket increases be applied to the divisions without regard to the specific divisions of individual joint rates. They have suggested, among others, the following methods by which this might be done:

(1) Graded percentages that will reflect in the various divisions a definite additional amount which the complainants should receive in excess of what they now receive, apportioned in inverse ratio to the present divisions; in other words, the highest divisions to be increased the least percentage, and vice versa.

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<sup>3</sup> The pertinent portion of paragraph (4), section 1, is as follows: It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property \* \* \* in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

Paragraph (6), section 15, is as follows: Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

(2) Fifteen per cent of the total amount accruing to the lines west of the Hudson River from divisions on traffic interchanged with complainants to be transferred to the latter to afford them an additional annual amount of revenue approximating \$25,000,000. This plan, it is urged, has the advantages of simplicity, flexibility, and definiteness; would permit the pooling and redivision of the total amount among the various complainants; the amounts paid to the complainants would be in absolute proportion to the amounts received by all the defendants jointly and severally; and while the plan remained in effect, divisions of particular rates could be examined and revised until all of the divisions were properly apportioned, when the plan could be discontinued.

(3) By the use of road-to-road per cents, combined into a road-to-New England per cent, a resumption of the method of dividing rates in vogue during the period of federal control, now applicable on some traffic to New England as to which divisions have not been reestablished since the termination of federal control, and on inter-line New England traffic between the Boston & Maine and the New Haven. Under this plan such road-to-New England per cents would be worked out for each defendant on the basis of normal traffic conditions, and then appropriate changes would be made in these per cents to increase the revenue received by complainants.

It is urged for defendants that the complainants are not in reality asking the fixation of just, reasonable, and equitable divisions of joint rates between themselves and other carriers, but that they seek, in substance, the transfer to them of a fixed amount to be arbitrarily deducted solely from the revenues of the carriers operating in eastern trunk line and central territories, to be "allocated" among the complainants, not in relation to the traffic which they interchange with the carriers outside of New England, but according to their failure to receive, out of the joint rates established pursuant to Ex Parte 74, a return upon the value of their property held for and used in the service of transportation as large relatively as the return received in the aggregate by defendants. In other words, that the allegation of unjust divisions is only a means by which to secure the adjustment of an alleged claim flowing from the fact that the complainants, among other carriers in New England, were included with certain of the defendants in a group designated by us in accordance with the provisions of the interstate commerce act. It is insisted that we may not erect a subgroup in a divisional case, especially one composed of these complainants alone, and consider divisions "as a whole"; that the statute limits our power to prescribing divisions "as between the carriers" parties to the joint rates and that after considering, "among other things," all of the

elements specified in the act, none of which is dominating, we must determine how much each carrier shall receive of each joint rate; that the application of a general principle would obviously produce divisions which would be unjust, unreasonable, and inequitable as between the individual carriers, and that the general principles governing the prescribing of divisions differ from those observed in authorizing rates under section 15a of the interstate commerce act, principally because the latter are made to produce a fair return for the carriers "as a whole," individual rates being subject to review in separate proceedings.

The divisions exhibited by complainants are of first and sixth class rates and of some few commodity rates on so-called merchandise traffic, the arrangements applying to class rates and to commodities which are classified. Coal and coke are not classified in the official classification, and as there is no evidence with respect to the divisions of the rates on these commodities, no finding can be made with reference thereto. Nor is it understood that the division arrangements exhibited are applicable to fluid milk and the edible products thereof, high explosives, fresh meat in carloads, or to short-haul transportation of low-class commodities.

With respect to commodities moving in foreign commerce, we are not asked to determine whether or not the divisions of the rates are just, reasonable, and equitable, but to require the cancellation of all joint rates and charges on such traffic or to authorize such other action as shall assure just, reasonable, and equitable compensation to the parties for their services in connection therewith. Nothing of record bears on the cancellation of the joint rates. With respect to the divisions which now accrue to the complainants out of the joint rates with their Canadian connections, it should be observed that our jurisdiction inheres only in so far as the transportation takes place within the United States.

The "importance to the public of the transportation services of" the complainants is conceded, and of it we take judicial notice, as well as of that of the principal defendants.

"The efficiency with which the carriers concerned are operated" is impossible of determination on the record, comprehending, as it does, all common carriers in the United States that are subject to our jurisdiction. Some general evidence was offered by complainants indicating that in the units of operating efficiency the degree of improvement in New England during the last few years has been as great as or greater than in the remainder of the eastern group. The specific evidence relates mainly to the operations of the New Haven. For that carrier it is shown that since 1915 it has increased its net ton-miles 85 per cent, decreased its freight-train miles 5.8 per cent,

increased its passenger-train miles 7.5 per cent, and increased the number of passengers carried 1 mile 36 per cent, notwithstanding the transportation department of that road has been operated with a constantly decreasing number of man-hours.

The elements which the complainants contend should or must be considered by us in determining whether their divisions accord with the provisions of the act are, their financial needs; their operating handicaps, some of the more important of which are said to flow from the terminal character of complainants' operations; the alleged disproportionate effect of recent wage increases upon their operating expenses; the increased cost of locomotive fuel and other railroad materials and supplies; per diem or freight-car hire; and the peculiar character of their traffic. It is said that complainants have very little traffic in the carriage of which they are intermediate carriers having no terminal expense; that their operations embrace large percentages of less-than-carload and passenger traffic; that they receive a larger percentage of raw materials than they forward of manufactured products; that they have little tonnage of low-grade commodities moving in volume; and that it is impossible for them to obtain as large a transportation product from a given amount of labor as is possible in other parts of the eastern group. The density of complainants' traffic is relatively low and the diversity of their routes, the diffusion of their traffic over New England, their numerous junction points, stations, branch lines, and switching yards permit only comparatively short hauls. In general, complainants endeavor to demonstrate that since the present divisions were established their costs of operation have increased relatively much more than have those of carriers in eastern trunk line and central territories.

It is asserted for complainants that they have demonstrated that the divisions they receive are inadequate "as a whole," even when tested by the standard of mileage. They urge, however, that "the amount of service rendered by the several carriers participating in a joint rate is no longer controlling," and that "mileage is no longer the yardstick by which divisions are to be measured." They urge that paragraph (6), section 15, of the interstate commerce act is revolutionary in that it subordinates the mileage haul and stresses certain other specified considerations which have no relation thereto, and that the provision that those factors shall be considered by us "without regard to the mileage haul" is, in a sense, the most important change in the law in respect of our power over divisions.

Locally, the needs of the New England carriers have had our consideration before. *The New England Investigation*, 27 I. C. C., 560; *Financial Investigation of N. Y., N. H. & H. R. R. Co.*, 31 I. C. C., 32;

*Proposed Increases in New England*, 49 I. C. C., 421; and *Ex Parte 74, supra*. We have recognized in the proceedings cited the peculiar local transportation difficulties encountered by the New England lines. In *Proposed Increases in New England, supra*, at pages 423-424, we said:

The transportation problem of New England is in many respects distinctive. This grows in part out of geographic conditions and to a still greater extent out of industrial and economic conditions. The New England lines serve directly almost none of the territory outside of New England, and they must depend in considerable part, so far as freight traffic is concerned, upon the tonnage interchanged with their rail connections to the west and north and with steamship lines serving the New England ports. For these reasons, and because they participate in only a part of the haul on through freight traffic into and out of New England, the New England lines have sometimes been referred to as "mere terminal or switching railroads," a statement that is misleading if strictly interpreted, but not wholly without value as suggesting a reason for some of the difficulties encountered by these carriers.

Another unusual feature of the New England situation is the character of the freight traffic. In no other section of the country does so large a percentage of the tonnage consist of high-grade manufactured products. Barring products of the forest and of the quarries the outbound movement of raw materials from New England is almost negligible. New England's industrial life depends largely upon importing large quantities of iron, cotton, wool, and other raw materials from the west and south and converting them into finished products. Power used in New England for these manufacturing processes is mainly derived from coal originating outside of New England and transported substantial distances by rail or water. It is estimated that for every three carloads of manufactured products moving west from New England five carloads of raw materials move eastbound into New England. Consequently there is a heavy movement of empty cars from New England to the west. One embarrassing result of this poorly balanced movement of traffic is that the New England carriers sometimes find it impossible to return cars to their western connections as fast as they receive them. This difficulty has been increased during the past two or three years by inadequacy of transportation facilities and delay at terminals. It results that the railroads in southern New England have for some time found their tracks and terminals blocked with cars, and their bad financial situation has been made much worse by reason of car per diem expenses. During the two years ended June 30, 1917, the single item of hire of equipment for the New Haven and Boston & Maine amounted to approximately \$9,633,000, or 50 per cent of the combined net corporate income of the two railroads during the two-year period. For the year ended December 31, 1916, the item of hire of freight cars, debit balance, was \$2,623,507 for the New Haven and \$2,561,723 for the Boston & Maine. As this case is in essence a rate revenue case, this heavy drain upon the resources of the New England carriers can not pass unnoticed.

Another peculiarity of the New England situation is the relatively large proportion of revenue derived by the carriers in southern New England from passenger traffic. During the year ended June 30, 1917, 45 per cent of the New Haven's revenue and 34 per cent of the Boston & Maine revenue were derived from passenger and allied traffic.

It is insisted for defendants that if special difficulties exist in New England it must be that they flow, not from the traffic interchanged with the connections of complainants, but from local conditions. Complainants' principal statistical witness states that the high proportion of traffic local to New England may have an adverse effect on operating costs. Obviously, all interchange carload traffic originated by the complainants in New England destined to points throughout the remainder of the United States and in the Dominion of Canada must be distributed by the defendants; all interchange traffic from points outside of New England delivered by the complainants must have originated at some point on defendants' lines, and the expense of furnishing cars and other expenses incident to its origination must have been borne by one or more of them. Inasmuch as the volume of interchange tonnage into New England considerably exceeds the outbound movement, the defendants must have the expense incident to originating and furnishing cars for a larger proportion of the interchanged traffic, and it must follow that it is usually less difficult for the shippers on the complainants' lines to be supplied with empty cars. It also follows that complainants have the expense of returning many cars without load to defendants.

There is no break of bulk of carload shipments during the transportation, and therefore the type of the car, the commodity, the weight of the load, and many other incidents of the through joint haul must be the same within and without New England. Defendants assert that the only conditions peculiar to New England are (a) a high proportion of passenger-train mileage to total train mileage, which prevails only in the densely populated section of southern New England; (b) the high proportion of less-than-carload freight as compared with the total tonnage, which must be transferred and handled en route by the defendants with a constantly decreasing load as the haul increases; (c) the substantial volume of traffic moving by water from and to New England owing to the concentration of about 78 per cent of the population within 50 miles of the coast line, the remainder of the territory being more sparsely settled; (d) the fact that New England is contiguous only on the west to eastern trunk line territory; and (e) the character of the products of New England manufacturers. These peculiarities, in the view of the defendants, afford no warrant for increasing divisions of joint rates, and for them it is asserted that the conditions in New England are in other respects essentially like those in other territories.

The distinctive transportation characteristics of New England, complainants contend, should here be given controlling weight.

However, it is their view that we must consider as the dominant factor "the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation."

Based on a property investment of \$838,274,769 of the seven complainant roads as of October 31, 1919, it is estimated that they obtained a net railway operating income for the year ended June 30, 1920, adjusted, of \$8,696,666, a return of approximately 1.04 per cent on the property investment. Their fixed charges, based on the same adjusted year, were \$34,783,380; their nonoperating income, \$7,170,256; and their "net" fixed charges \$27,613,124. Thus, the complainants show that they failed to meet their fixed charges for the year ended June 30, 1920, by \$18,916,458. Taking the actual results of the first four months of a year ending August 31, 1921, and estimating the remainder of the year therefrom, complainants forecast that they may fail to meet their fixed charges for the year 1921 by \$27,386,975. This estimate attempts to make allowance for diminution in traffic. The results of operation for the months of September and October, 1920, indicate that traffic fell off and that the net income for those two months, after the payment of fixed charges, was a deficit of \$3,591,183.

The property investment shown by the complainants includes \$40,213,406, alleged to represent the value of the contract rights of the New Haven in the New York terminals of the New York Central, and about \$8,500,000 for the investment in the Portland Terminal Company, which is controlled by the Maine Central through ownership of the entire capital stock. The preliminary reports of our bureau of valuation indicate that the cost of reproduction new of the lines of complainants was \$760,195,671, and the present value of land \$161,229,938, a total of \$921,425,609.

The ratios of net railway operating income to property investment of five of the complainants and of the principal lines in the eastern group other than such New England lines for the years ended June 30, 1913, to 1917, inclusive, and the calendar year 1919, and the ratios of deficit to property investment for 10 months of 1920, are shown in the following statement:

	1913	1914	1915	1916	1917	1919	1920 (10 months).
New England.....	4.88	3.82	4.75	6.01	5.68	1.62	1.2. 19
Eastern group less New England	5.10	3.79	4.20	6.43	5.63	1.84	1.92

<sup>1</sup> Ratio of deficit.

The property investment upon which the ratios are based excludes materials and supplies. On the surface the statement does not indi-

cate that in periods prior to the recent large increases in wages and rates these complainants were weak roads as compared with the defendants in the eastern group. Comparing individual roads, it may be observed that the Central of New Jersey, the Erie, including the Chicago & Erie, the Pennsylvania, lines east as well as lines west, the New York, Ontario & Western, the Delaware & Hudson, and many others outside of New England earned a less per cent of their standard return during the period of federal control than did the New Haven, and that in several instances the percentage of operating income to property investment for the first 10 months of 1920 for some of the direct connections of the complainants showed a deficit greater than the average for all the New England roads.

One basis for the complaint is set forth in paragraph VIII thereof as follows:

In the recent proceedings before the Commission in *Ex Parte 74 (Increased Rates, 1920, 58 I. C. C., 220)* the complainants and such of the defendants as are situated in that section of the country known to the Commission as official classification territory were included in one rate group; as a result of the inclusion of complainants' property investment accounts and revenue requirements in the same rate group with said defendants, the amount of additional revenue necessary for the carriers in the group as a whole was increased to such an extent that the defendants in said group will receive annually approximately \$25,000,000 in revenue in excess of what they would have received if the complainants had not been included in said group.

During the pendency of *Ex Parte 74* our attention was directed to this contention of the lines in New England and to the fact that an average percentage increase for official classification territory as a whole would not meet the needs of the New England carriers. We found, however, with certain exceptions, that general percentage increases made to fit the needs of the groups of lines serving each of the four groups designated by us must be considered for the then present purposes the most practicable, without prejudice to any subsequent finding in individual situations, stating, at page 247, that—

While the New England carriers are included in the eastern group and are subject to the percentage for that group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines.

A brief and necessarily general outline of the basis for the allegation of paragraph VIII of the complaint follows: New England, located in official classification territory, was included in the eastern group, the boundaries of which are practically coterminous with those of official classification territory. The complainants do not contend that New England was included therein without their consent, nor do they ask that it be separated therefrom. For rate-making purposes, official classification territory had been subdivided into  
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New England, eastern trunk line, and central territories; the first, coterminous with New England; the second, that portion of the United States west of Vermont, Massachusetts, and Connecticut, north of the line of the Norfolk & Western and east of a line drawn through Buffalo, N. Y., and Pittsburgh, Pa.; and the third, that portion of the United States lying west of the Buffalo-Pittsburgh line, north of the Ohio River and east of the Mississippi River, excluding the greater portion of Wisconsin and the northern peninsula of Michigan. The financial needs of the carriers, estimated in part, were based upon statistical data derived from questionnaires sent to the individual carriers, their original proposals not having made allowance for the wage award made by the United States Railroad Labor Board July 20, 1920, after the close of the hearings. Data for 51 class-I systems, 39 class-II, 30 class-III, and 24 switching and terminal companies were considered in the proposals for the eastern group.

After our decision in Ex Parte 74, the assertion of the New England carriers that they had lost and the other carriers in the eastern group had gained by the inclusion of New England in that group was considered by a conference of the executives of the eastern roads. For informal discussion data taken from the questionnaires for a constructive year ended October 31, 1919, were assembled separately for the complainants and the Boston & Albany; for class-I roads in eastern trunk line territory; and for class-I roads in central territory, the other classes of roads being excluded. From these data it was computed by an expert of one of the defendants that the eight New England carriers, the eastern trunk line carriers, and the central territory carriers, prior to the wage award of the labor board, required to produce a net return of 6 per cent on their property investment, increases in their freight and switching revenues amounting to 47.407, 29.767, and 24.431 per cent, respectively. All of the carriers in the eastern group, considered "as a whole," required an increase of 29.461 per cent, but if the carriers in eastern trunk line and central territories had been embraced in a separate group, they would have needed only 27.981 per cent increase. Accordingly, complainants contend that, due to their inclusion in the eastern group, they lost, and the other carriers in the group gained, 1.48 per cent of the total freight and switching revenues prospectively derivable from the increases allowed in Ex Parte 74. Stated more specifically, the freight and switching revenues of the eight New England carriers for the constructive year were \$136,298,531, and they needed 47.407 per cent of that amount in addition, or \$64,616,799. Mathematically they received, or will receive, only the average per cent for the group as a whole, 29.461 per cent, or

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\$40,150,989, a difference of \$24,464,860, or 17.946 per cent, which they state might be allocated among themselves and the Boston & Albany by a similar mathematical process, as follows:

	Per cent of increase in freight revenues to produce 6 per cent on property investment, 47.407.	Less average per cent of eastern group, 29.461.	Adjustment to equalize all roads.
Bangor & Aroostook.....	57.15	27.69	\$1,695,908
Boston & Albany.....	28.81	35	51,668
Boston & Maine.....	34.95	5.49	2,507,544
Central New England.....	57.35	27.89	1,078,867
Central Vermont.....	72.85	43.39	1,630,394
Maine Central.....	57.87	21.91	2,452,499
New York, New Haven & Hartford.....	58.56	28.10	13,946,329
Rodland.....	61.59	32.13	812,494
Eight carriers.....	47.407		24,464,860

Of the above amount defendants' expert computed that about two-thirds was gained by the eastern trunk lines and about one-third by the central territory carriers. On this statistical basis the eastern trunk lines, considered as a separate group, also suffered by their inclusion in the eastern group to the extent of the difference between the per cent their freight and switching revenues needed to be increased, 29.767 per cent, and the per cent of the group as a whole, 29.461 per cent, and the central territory carriers benefited to the extent of the difference in the per cent of their needs, 24.434, and the per cent of the group as a whole. In other words, theoretically the eastern trunk lines, by their inclusion in the eastern group, lost \$3,374,276 and the central territory carriers gained \$27,811,393. The statistical situation in respect of the trunk line carriers with which the complainants have direct connections follows:

	Per cent plus or minus 29.461.	Gain.	Loss.
Central Railroad of New Jersey.....	3.05 plus.....	\$1,000,737	
Delaware & Hudson.....	6.05 plus.....	1,801,642	
Delaware, Lackawanna & Western.....	19.99 plus.....	10,498,606	
Lehigh & New England.....	22.85 plus.....	866,282	
New York Central, lines east.....	13.09 plus.....	23,771,538	
Erie.....	16.38 minus.....		\$12,705,429
Lehigh Valley.....	0.26 minus.....		139,187
New York, Ontario & Western.....	63.21 minus.....		3,667,708
Pennsylvania, lines east.....	10.24 minus.....		28,347,266
Total.....		37,938,731	46,145,701
Net loss.....			\$8,207,080

<sup>1</sup> The New York, Ontario & Western is controlled by the New Haven through the ownership of a majority of its stock.

However, the so-called Pocahontas lines; that is, the lines of the Chesapeake & Ohio, Norfolk & Western, Richmond, Fredericksburg & Potomac.

& Potomac, Virginian, and Washington Southern, are also within the eastern group. Had these lines been excluded, the eastern group lines as a whole would have needed to have their freight and switching revenue increased 30.586 per cent to produce a net return of 6 per cent on their property investment and, statistically, as the Pocahontas lines needed their freight and switching revenues increased by 15.729 per cent, they gained \$18,598,904 by being in the eastern group. On the adjustment proposed by the complainants the Virginian Railway would contribute \$152,398, although, by its inclusion in the eastern group, it theoretically lost \$1,981,168. The statistics of the so-called Allegheny region lines, i. e., Baltimore & Ohio, Bessemer & Lake Erie, Central of New Jersey, Pennsylvania, lines east, Philadelphia & Reading, Western Maryland, Buffalo & Susquehanna, and Staten Island Rapid Transit, so presented in Ex Parte 74 indicated a need for increases in their freight and switching revenues of 36.126 per cent. The application to them of the common percentage of the eastern group resulted in a theoretical loss to the Allegheny region lines of \$36,244,058.

The data upon which the complainants contend they lost and the defendant eastern trunk line and central territory carriers gained 1.48 per cent of the total freight and switching revenues were incomplete. The complete figures presented to us in Ex Parte 74 indicate that the revenue needs, excluding amounts to be raised from passenger-train service, passenger revenue, excess baggage, Pullman surcharge, and milk, were for all roads in the eastern group 39.75 per cent of the total freight and switching revenue, while the revenue needs, including the revenues from passenger-train service, for the defendants were then 38.55 per cent of their freight and switching revenue, a difference of 1.2 per cent of the total freight and switching revenues, or \$20,377,678, approximately \$4,000,000 less than the amount claimed by the complainants. If the Pocahontas lines had been excluded from the eastern group the remainder of the lines in the group would have needed their freight and switching revenues increased 40.95 per cent, or 1.2 per cent more than the group as a whole required. In other words, what the complainants lost theoretically the Pocahontas roads gained. The complainants are located in the northeastern part of the eastern group and the Pocahontas lines in the western part. They do not directly connect, and the amount of tonnage participated in under joint rates to or from New England is negligible. This fact is significant only in that it suggests that there is not necessarily a relation between the prayer of the complainants for increased divisions and their claim for adjustment of earnings due to their inclusion in the eastern group. The amounts by which the lines west of the Hudson River are

alleged to have benefited by the inclusion of the New England lines in the eastern group bear no relation to the traffic which they interchange with the complainants.

It is contended for defendants, however, even assuming that the theory of complainants has merit, that the total of \$24,464,860 should not be assigned to the interchange traffic alone, but should be apportioned among the various classes of traffic, as follows: Local, \$3,701,533, or 15.13 per cent; interline New England, \$2,358,413, or 9.64 per cent; interline Canadian, \$1,091,133, or 4.46 per cent; New England passenger, \$8,335,178, or 34.07 per cent; and interline trunk line, \$6,329,059, or 25.87 per cent; Boston & Albany, \$2,649,544, or 10.83 per cent. It is defendants' view that, if there is any merit in complainants' contention that their inclusion in the eastern group benefited the other carriers in that group, the extent of alleged benefit should be measured by the total per cent of the deficiency to total operating revenues and not by the per cent of the deficiency to freight revenues. Thus measured the inclusion of the complainants' lines increased the needs of the carriers in the eastern group from 32.71 per cent to 33.28 per cent of the total operating revenues, a difference of 0.57 per cent. The total operating revenues of the carriers in the eastern group for the constructive year ended October 31, 1919, were \$2,585,316,615, of which 0.57 per cent is \$13,488,748, and defendants assert that this amount represents the theoretical benefit rather than 1.48 per cent of the freight and switching revenues, or \$24,464,860, as stated by the complainants.

Based on their needs when application was made in Ex Parte 74, and disregarding the downward trend of traffic and revenues since that time, 21 carriers in the eastern group may earn more than 6 per cent on their property investment because the required percentage increases of their freight and switching revenues were less than the required percentage of the eastern group as a whole. The amount of their contribution to the 1.48 per cent would be \$11,337,717. However, under the provisions of paragraph (6) of section 15a of the interstate commerce act, if any carrier receives for any year a net railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation, one-half of such excess is recoverable by the Commission for the purpose of establishing and maintaining a general railroad contingent fund. Hence 50 per cent of the return in excess of 6 per cent, if earned, would not be available in any adjustment with the complainants covering the past, although it would be available for the future.

In their original applications in Ex Parte 74 the carriers proposed general percentage increases in freight rates in the eastern group of

30 per cent. After the wage award they filed an amended application. We estimated, based on data furnished by the labor board, that the wage award would be equivalent to 12.2 per cent of the total railway operating revenues of the eastern group carriers. We approved increases in the eastern group of 40 per cent for freight service, including switching and special services; 20 per cent in passenger fares, excess-baggage charges, and rates on milk and cream; and authorized a surcharge upon passengers in sleeping and parlor cars of 50 per cent of the charge for space in such cars, such charge to accrue to the rail carriers. Joint or single line through rates between points in one group and points in other groups were permitted to be increased 33½ per cent.

The increases on freight traffic for the roads in the eastern group did not average 40 per cent. Complainants estimate that they actually received or will receive 37 per cent increase instead of 40 per cent. Principally because of the interterritorial percentage increase having been made 33½ per cent, the refusal of certain states to permit increases in intrastate rates equal to those we authorized for interstate traffic, and the continuance of fixed differentials, it is estimated that the increases for roads in the eastern group other than the complainants will be freight, 36.06, and passenger, 18.08 per cent. The acquiescence of the New England lines in being treated as a part of the eastern group and in receiving no more than the uniform percentage increases for the group as a whole was undoubtedly due to the fear on their part and on the part of the shippers in New England that a larger increase of rates, corresponding to financial needs, in New England than in the remainder of the eastern group would injure industry and traffic. The complainants and the defendants may be said to have been joint participants in a common undertaking, i. e., to have their rates increased uniformly. Prescribing rates as a whole in rate groups necessarily means that the return will not be the same for each carrier. Complainants admit that the eastern trunk line and central territory carriers can not be legally required to transfer directly to them an equalizing amount, but claim that this may be accomplished indirectly through a change in the divisions of joint rates.

Complainants particularly emphasize another of the statutory considerations for the determination of just, reasonable, and equitable divisions: They are either originating or delivering carriers in respect of the largest percentage of their traffic. For example, it is stated that 93 per cent of the traffic of the New Haven begins or ends on its line. Advance in transportation has been more marked in train service than in terminal services, or the latter has not kept pace with the former. Complainants contend that New England,

particularly the dense manufacturing sections of Connecticut, Rhode Island, Massachusetts, and southern New Hampshire, containing 3,400,000 people, or 3.25 per cent of the population of the United States, is in effect a large terminal or railroad yard, and much of their evidence is directed to demonstrate the relatively high costs inherent in that condition. They assert that they suffer a double disadvantage; heavier terminal expenses than their connections, which must be borne from the revenues received from relatively short hauls, and, in addition, several of the complainants have no well-defined main lines, those of the New Haven, Boston & Maine, and Maine Central constituting 11.5, 8.12, and 24.67 per cent, respectively, of the total mileage operated. The main lines of the New Haven are bisected at frequent intervals by cross lines of traffic importance; there are many secondary lines, and numerous branch lines. The lines of the Boston & Maine radiate from Boston like the spokes of a wheel, and are interlaced at various points by secondary lines. These characteristics mean, it is said, an unusually high density of stations, yards, junction points, and locomotive terminals; relatively short hauls for freight, and, because of the scattered manufacturing cities and towns, a large amount of "dropping and picking up" of cars, a large number of switching classifications in yards, a heavy detention of freight cars, and a low ton-mile productivity of equipment and labor, effecting high operating costs and high investment per unit of traffic.

Based on property investment figures submitted in Ex Parte 74 of \$833,583,558 for New England lines, other than the Canadian Pacific lines in Maine and the Boston & Albany, and of \$8,327,377,457 for the eastern trunk and central territory lines, it is shown that those investments are, respectively, \$109,480 and \$145,026 per mile of road. The investment per mile of road for the New England lines is 75.5 per cent of that for the eastern trunk and central territory lines. Based on a separation of operating expenses between freight and passenger train service, however, it is shown that the freight proportion of operating expenses was 63.03 per cent for these New England roads and 76.27 per cent for those in eastern trunk line and central territories, making the freight service proportion of the property investment, based on operating expenses per mile of road, \$69,006 for these New England roads and \$110,611 for the eastern trunk line and central territory roads. The revenue ton-miles of these New England carriers for the calendar year 1919 were 37.6 per cent per mile of road of the revenue ton-miles of the eastern trunk line and central territory carriers, and the property investment per 1,000,000 revenue ton-miles per year was, per mile of road: New England, \$58,005; eastern trunk line and central territory, \$34,958; the

former being 165.9 per cent of the latter, the result, it is said, of the lower density of traffic, the greater density of terminals, and the shorter haul. On this basis, the net operating income must assume a 66 per cent greater carrying charge per ton-mile for these New England roads than for eastern trunk line and central territory carriers. This is a rough average and admittedly an indicative approximation only.

The major operating handicaps, interrelated and overlapping each other, of the complainants in comparison with operations in eastern trunk line and central territories, each of which is said to embrace factors largely beyond the control of complainants, may be summarized under four general headings: (a) diversity of routes and diffusion of traffic, (b) low freight traffic density, (c) terminal characteristics, and (d) short hauls.

#### DIVERSITY OF ROUTES AND DIFFUSION OF TRAFFIC.

The large number of junction points on the New Haven and the Boston & Maine has been referred to. In further reference to the diffusion of traffic it is shown that 70 per cent of the tonnage of the New Haven originates or terminates at 53 stations out of about 550 stations on that road. Of the 53 stations, 16 are located on the main line, 10 on three branch lines, 8 on a group of branch lines in Massachusetts between Fitchburg and Lowell and between Fall River and New Bedford, and 19 are widely scattered. A study of the car movement through Harlem River, N. Y., and Maybrook, N. Y., for one month shows that of 54,000 cars from eastern trunk line territory, 36,000 moved via the first and 18,000 via the second gateway. Of the cars which moved by way of Harlem River and the New Haven, 5.1 per cent were delivered between Harlem River and Bridgeport, 20.8 per cent were delivered at or diverted from the main line at Bridgeport, Conn., 51 miles from Harlem River for movement to Waterbury, Conn., and to 10 other districts in that territory; 35.5 per cent were delivered at New Haven or diverted from the main line to Hartford, Springfield, and 14 other stations; 5.9 per cent were delivered at New London, Conn., or diverted north to Worcester, Mass., and to branch-line points; 8.8 per cent were delivered at Providence, R. I., or diverted by way of a large number of branches to 15 different sections; 7.7 per cent were delivered at Attleboro, Mass., or diverted to Taunton and South Braintree and thence; and 1.6 per cent were delivered at Mansfield, Mass., or diverted. Only 12.9 per cent moved through to Boston. The above statement does not comprise cars moving less than 50 miles. Analysis of the movement through Maybrook developed a similar result, only 6.4 per cent of the cars moving through to Boston. It should

be noted, however, that it is unusual for a carrier receiving a volume of traffic at one end of its line to carry most of it through to the farthest point on its line. Of the 54,000 cars, 41.5 per cent moved less than 150 miles and received three terminal handlings. In October, 1920, the Maine Central received 3,010 loaded cars via its principal junctions for 431 destinations, nearly 50 per cent of which were handled less than 100 miles. An analysis of freight-train service for one day, May 26, 1920, on the Boston & Maine shows that in fast-freight service 63.8 per cent of the cars were handled through from the originating terminal to the end of the run; in slow-freight service 56.9 per cent, and in local and mixed trains 24.8 per cent were so handled. The wages of the train crews in these respective services were 68 cents, 88 cents, and \$4.27 per train-mile.

#### LOW FREIGHT TRAFFIC DENSITY.

The ton-miles of revenue freight per mile of road for eight New England roads, the complainants and the Grand Trunk in New England, for the calendar year 1918, were 1,226,084, while the similar ton-miles for eastern trunk line and central territory carriers were 3,638,058. The lowest density is that of the Bangor & Aroostook, 420,394 ton-miles of revenue freight per mile of road; the highest, the Central New England, 1,788,786 ton-miles. The density of traffic on the lines of other carriers with which complainants interchange traffic is shown below in a statement of ton-miles of revenue freight per mile of road.

Carrier.	Ton-miles.
Delaware & Hudson.....	4,465,736
Delaware, Lackawanna & Western.....	5,836,909
Erie.....	4,482,310
Lehigh & Hudson.....	3,940,583
Lehigh & New England.....	990,838
Lehigh Valley.....	4,800,895
New York Central.....	4,221,915
Boston & Albany.....	5,946,202
New York, Ontario & Western.....	1,362,691
Central of New Jersey.....	4,362,066
Long Island.....	344,996
Pennsylvania, lines east.....	3,544,561
Pennsylvania, lines west.....	5,177,761

This indicates a relatively low traffic density on the lines of the complainants.

#### TERMINAL CHARACTERISTICS.

The terminal condition of the New England lines which makes for high operating costs, notwithstanding that relatively the degree of improvement in units of operating efficiency has been at least as



great in New England as in other parts of eastern territory, has been noted generally. The ratio of expenditures in New England for maintenance of way during the period of federal control was but slightly higher than in other parts of eastern territory; that for maintenance of equipment was lower in New England than elsewhere in eastern territory, possibly due to a lesser number of cars. The operating ratio for the complainants and the Grand Trunk in New England was 91.9 per cent; for eastern trunk and central lines, 87.6 per cent. During the test period the operating ratio for the complainants averaged 69.8 per cent; for eastern trunk and central territory lines, 69.5 per cent, so that the percentage of increase during the period of federal control over the test period was greater in New England than in eastern trunk line and central territories.

The following statement contrasts the ratio to total operating revenue of direct cost to complainants and to certain eastern lines of conducting transportation during the federal control period:

Carrier.	Ratio.	Carrier.	Ratio.
Bangor & Aroostook .....	48.8	Lehigh & New England .....	84.7
New Haven .....	48.2	New York Central .....	41.3
Butland .....	48.1	Delaware, Lehigh & Western .....	63.1
Central New England .....	48.2	Lehigh & Hudson River .....	43.6
Boston & Maine .....	54.1	Pennsylvania lines west .....	64.2
Maine Central .....	55.9	Pennsylvania lines east .....	45.6
Central Vermont .....	61.8	Delaware & Hudson .....	47
		Lehigh Valley .....	47.1
		Central of New Jersey .....	48.6
		New York, Ontario & Western .....	48
		Long Island .....	48.9
		Erie, including Chicago & Erie .....	50.6
		Boston & Albany .....	52.4

Conducting transportation embraces the direct costs incurred in the production of transportation. Relatively, the direct costs to the New Haven were but slightly more than those of the Delaware & Hudson, the Lehigh Valley, the New York, Ontario & Western, and less than those of the Long Island and the Erie, including the Chicago & Erie, or the Boston & Albany. On the contrary, the Central Vermont, with a well-defined main line from New London, Conn., to St. Johns, Canada, and comparatively few branches and junction points, has the highest ratio of any of the complainants or of the defendants shown. This, possibly, may be due to adverse weather conditions, but, on the other hand, the Bangor & Aroostook, the northernmost railroad in continental United States, subjected to a usual snowfall of 11 feet per year, of all the complainants has the lowest ratio. The variances in the ratios among the complainants are suggestive that an average for all of complainants does not accurately portray the situation of individual carriers. Extreme weather conditions in Michigan also handicap the Michigan carriers and the

Ann Arbor and Pere Marquette, operating car ferries across Lake Michigan, are subjected to heavy expense, which they must meet from competitive rates applicable via Chicago, Ill., to the northwest.

No comprehensive data were available on freight-station density. A special study indicates that the Boston & Maine and the New Haven have one freight station for every 3.87 miles of road; the New York Central, the Erie, the Baltimore & Ohio, and the Pennsylvania, one for every 4.3 miles of road. In New England there is an agency station for each 4.1 miles of rail line; the Pennsylvania has one for every 5.8 miles. For the calendar year 1919 the average carload in New England was 23.5 tons; for the eastern trunk and central territory lines, 30.3 tons. The car-miles per car-day in the same year were 16.1 in New England; 21.9 miles in eastern trunk line and central territories. The per cent of loaded to total car-miles was 72 in New England and 67.7 in the other territories. These factors afford the resultant of freight-car utilization expressed in net ton-miles per car-day; 273 in New England and 449 in eastern trunk and central territories. Either the New England utilization of freight cars was only 61 per cent of that of the trunk and central territory lines or the latter were able to produce 64 per cent more ton-miles per car-day than the New England roads named. The average train speed in New England for fast, slow, and local freight was 10.5 miles per hour; for trunk and central territory lines, 9.9 miles per hour. The average trainload was 74 per cent greater in eastern trunk line and central territories than in New England. The New England lines produced only 55.9 per cent of the net ton-miles per locomotive-day produced by lines in trunk line and central territories.

An indication of the relativity of station expenses is limited to a comparison of the Boston & Maine and the New Haven, on the one side, with the Baltimore & Ohio, the Pennsylvania, and the Erie on the other side. The average for the two complainants was \$1.45 per 1,000 ton-miles; for the named trunk lines, 47 cents.

The freight-yard costs per 1,000 net ton-miles as exhibited by the complainants, individually and relatively, are shown by the following statement:

Carriers.	Yard costs.
Bangor & Aroostook.....	\$0.62
Boston & Maine.....	1.511
Central New England.....	.883
Central Vermont.....	1.309
Grand Trunk.....	1.061
Maine Central.....	1.085
New Haven.....	1.849
Rutland.....	.988
Average.....	1.494
Average trunk and central territory.....	.961

The cost in New England, on the average, is a reflex of traffic and operating characteristics.

There is comparatively little difference in the cost per freight-train mile, either for wages or totally, between New England and trunk line and central territories, but the cost per 1,000 net ton-miles is materially different, as shown herewith:

Carriers.	Wages.	Total.
	<i>Cents.</i>	<i>Cents.</i>
Bangor & Aroostook .....	145.9	493.6
Boston & Maine .....	126.9	389.6
Central New England .....	105.5	341.4
Central Vermont .....	123.9	396
Grand Trunk .....	72.5	326
Maine Central .....	129.6	412.8
New Haven .....	126	358
Rutland .....	119.6	354.2
Total .....	124.1	381.9
Total trunk and central territory .....	67.4	216.1
Per cent .....	184.1	176.7

Notwithstanding these statements, which appear to make for high operating costs, defendants show that the total operating revenues of the complainants and the Boston & Albany were \$243,043,443 and their total operating expenses \$245,941,273, an operating ratio of 101.19 per cent, whereas, for the same period, the first 10 months of 1920, the total operating revenues of the trunk lines were \$1,563,921,212; their operating expenses \$1,567,738,056; an operating ratio of 100.24 per cent. The central territory lines' operating ratio for the same period was 92.97 per cent; the grand-total average for the eastern district, 98.68 per cent.

The average receipts per ton for the New England lines for a constructive year ended October 31, 1919, were \$1.525; for the trunk lines, \$1.287. The average receipts per ton-mile, for the same year, for the New England lines, were 1.36 cents; for the trunk lines, 0.889 cent. The following statement contrasts the average receipts per ton-mile of the complainants and their direct western connections for the calendar year 1919:

Carrier.	Average receipts.	Carrier.	Average receipts.
	<i>Cents.</i>		<i>Cents.</i>
Bangor & Aroostook .....	1.723	Erie .....	0.518
Boston & Maine .....	1.315	Delaware & Hudson .....	.535
Central New England .....	1.108	New York Central, including Boston & Albany .....	.373
Central Vermont .....	1.478	Pennsylvania lines east .....	.359
Maine Central .....	1.267	Lehigh Valley .....	.398
New Haven .....	1.557	New York, Ontario & Western .....	1.028
Rutland .....	1.206	Central of New Jersey .....	1.38
		Delaware, Lackawanna & Western .....	1.074
		Long Island .....	4.912
		Lehigh & New England .....	1.469

The Long Island carries relatively little freight and is largely a suburban passenger road.

Although complainants have sought to show that they are essentially terminal carriers, the ratio of switch tracks to total tracks operated December 31, 1919, and the switching locomotive mileage to the total locomotive mileage for the calendar year 1919 shows that the New England lines, including the Boston & Albany, had an average ratio of switch tracks to all track operated of 30.64 per cent; the other eastern roads, 34.63 per cent; and that the ratio of yard-switching locomotive-miles to total locomotive-miles performed in the transportation service was 17.78 per cent for the New England lines and 22.01 per cent for the other roads in the eastern district. Complainants explain this by pointing out that more locomotive-miles are necessary in New England in proportion to freight handled than in the territory west of the Hudson, because of the shorter trains made necessary by operating conditions. Compared to the total freight handled they claim that the relative amount of switching in New England is substantially greater.

Cost figures were submitted in an exhibit of the New Haven and the Central New England, based on the 11 months ended May 31, 1919, adjusted by the 40 per cent increase under Ex Parte 74, as follows:

	Per-centage of ton-miles.	Revenue per ton-mile.	Per cent revenue to average cost.	Average haul.	Gross revenue.	Per cent of gross revenue.
		<i>Cents.</i>		<i>Miles.</i>		
Interchange.....	80.7	1.541	82	136.29	\$38,440,026	54
Intraline New England.....	6.8	4.371	240	65.32	9,200,800	13
Local.....	12.5	6.123	330	60.11	23,567,481	33

The average total operating cost and revenue per revenue ton-mile, in cents, and the operating ratios on freight for the two roads combined, for September and October, 1920, were:

	Cost.	Revenue.	Ratio.
	<i>Cents.</i>	<i>Cents.</i>	
September.....	1.8806	1.9739	94.73
October.....	1.8824	1.9912	94.54

It is therefore argued that the two complainants combined handled their interchange traffic with 80.7 per cent of their ton-miles at a rate of, roughly, 1.54 cents per ton-mile, whereas the average cost of all their freight traffic was about 23 per cent more. In connection with these figures it is shown that the passenger business of these

roads is more nearly remunerative than the freight business. The operating ratios, under formula corresponding to or closely analogous to that prescribed by us, were:

Period.	Passenger.	Freight.
July, 1916.....	65	64
First six months of 1920.....	84	111
September, 1920.....	81	96
October, 1920.....	85	96
November, 1920.....	87	104

From these figures the New Haven and Central New England contend that the conclusion is inevitable that freight as a whole is not remunerative, and that the loss is from the 54 per cent of revenue derived from 80.7 per cent of the ton-miles, that is, from the freight interchanged with the trunk lines. This is a comparison of unlike factors. The local traffic is handled by one road; the interline and the interchange traffic are handled by two or more roads; the average haul for the local traffic is the total haul; for the interline and interchange traffic the haul is only that of the New Haven and Central New England combined, and does not include that of the connecting carriers. The character of the traffic is different, raw materials comprising a far greater percentage of the interchange traffic than of the local or the interline traffic. The rate bases are different, that in New England being substantially higher than that applicable between New England and trunk line territory, as is illustrated by the fact that the Anderson scale of class rates prescribed locally in *Proposed Increases in New England*, is not in full effect to the junction points because of the provisions of the fourth section of the act. The ton-miles and the revenues are different. The loading per car is greater in the interchange than in the local traffic, the former for the three months ended June 30, 1920, on the New Haven, having been 31.2 tons per car; the latter, 23 tons; during the same period the traffic originated on the Boston & Maine averaged 20.5 tons per car; that received from its connections, 30.5 tons. The cost is of all freight traffic, not of the interchange traffic. Were all of the figures reduced to a relation to the local traffic, which was moved 60.11 miles, the revenue per ton-mile on the interline would be 71.36 per cent of the revenue per ton-mile on the local traffic and the revenue per ton-mile on the interchange would be 25.71 per cent of the revenue per ton-mile on the local. Assuming that the traffic was of the same character and moved on rates which were as high as the Anderson scale, it is shown that the first-class rate, prior to Ex Parte 74, for a distance of 60.11 miles, 41.5 cents per 100 pounds, would yield 13.833 cents per ton-mile, 71.36 per cent of which would be 9.871 cents per

ton-mile, the revenue under the Anderson scale for a distance of 91 miles, and 25.71 per cent of which would be 3.566 cents per ton-mile, the revenue from a rate of 74 cents per 100 pounds under the Anderson scale for 444 miles. The haul of interchanged freight beyond the junctions must exceed the difference between 136.29 miles, the average haul of the New Haven and Central New England on interchange traffic, and 444 miles, since it moves throughout the United States. Complainants claim, however, that the lines performing terminal service in connection with a joint haul are fairly entitled to divisions of the joint rates yielding relatively higher earnings per ton-mile than the average earnings for the entire haul.

The cost of locomotive fuel is one of the greatest items of expense in the operation of the New England roads. Complainants estimate that this cost alone increased \$25,000,000 in 1920 over the annual cost before the war. In 1919 the complainants paid freight charges on coal of \$8,591,915; on other materials and supplies, \$969,670, a total of \$9,561,585. Were all of this tonnage subject to an increase of 40 per cent in accordance with Ex Parte 74, the total freight charges paid by complainants would be \$13,386,219. During the calendar year 1919 the complainants and Grand Trunk in New England consumed 3,630,385 tons of bituminous coal which, at the price which prevailed in September of that year, cost, on an average, \$4.95 per ton; lines in eastern trunk line and central territories consumed nearly 40,000,000 tons, which, on the same basis, cost \$3.10 per ton. Figured on the prices which prevailed during the eight months' period ended August 31, 1920, the respective costs were \$7.35 and \$3.79. Coal has always cost more in New England than in coal-producing sections, because of the longer haul from the mines, but complainants' claim is that for this very reason the recent increases in freight rates have caused a disproportionate rise in their fuel cost compared with that of defendants.

What portion of the cost of locomotive fuel is properly chargeable to its transportation is not susceptible of accurate ascertainment from this record. Company freight in 1918 was carried an average of 62 miles in New England and 115 miles in the remainder of the eastern group. Coal mines are not located on the lines of all carriers in the eastern group, and many of them are compelled to purchase coal from mines on other roads; but very few, if any, of them have so long a haul from the mines as the New England roads. It is expected that during the coming year there will be a substantial saving in fuel costs.

In certain parts of New England, particularly in sparsely settled sections of western Vermont and in Maine, penetrated by the Bangor & Aroostook, the Rutland, and the Central Vermont, living con-

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ditions are said to have been such that the carriers were not compelled to pay the wages which were paid in the more thickly populated manufacturing sections of the other states. The partial standardization during federal control brought about a disproportionate increase in the wages on these lines. During the three years ended June 30, 1917, herein referred to as the test period, the average annual pay roll of the complainants was \$63,800,000; in 1919 it was \$129,350,000; and for 1920, estimated, \$174,000,000. Based on latest estimate for the complainants, it is indicated that the wage award increased their expenses at the rate of approximately \$33,000,000 per annum. For other eastern roads the annual increase was approximately \$290,655,100. A comparison of the average daily compensation for the year ended June 30, 1910, between roads operating in New England and those operating immediately west of the Hudson River shows that the compensation for most classes of employees was lower west of the Hudson River in that year than in New England.

Reference has already been made to the relatively large proportion of revenue derived by the carriers in southern New England from passenger traffic. The total revenue of the New Haven is obtained about equally from freight and from passenger traffic, while the New England lines as a whole receive about two-fifths of their revenue from passenger traffic. The lines west of the Hudson River derive 72 per cent of their revenues from freight traffic; therefore complainants contend that as the general increases permitted by us and by the Director General of Railroads have been mainly applied to freight traffic, and when applied to passenger as well as freight traffic have been greater on freight than on passenger, although their needs were greater than other carriers, they have received the least relief. This necessarily raises the question whether in this divisional case we may consider the "financial needs" of the complainants in all their angles, retroactively and prospectively, and increase the divisions of the complainants on merchandise traffic interchanged with their connections to produce a fair return upon their property held for and used in the service of transportation, although the passenger traffic may in no definite way relate to the service performed by the carriers parties to joint rates which we are called upon to divide. The New Haven operating ratios, as we have seen, were:

Period.	Passen- ger.	Freight.
July, 1916.....	55	64
First six months of 1920.....	54	111
September, 1920.....	51	95
October, 1920.....	55	95
November, 1920.....	57	104

Under similar formula the operating ratios for the complainants, for the first six months of 1920, when the New England lines were subjected to severe weather conditions and to strikes, show the relative condition as between passenger and freight traffic, as follows:

	Passenger.	Freight.
Bangor & Aroostook.....	88	105
Maine Central.....	103	106
Central Vermont.....	151	115
Boston & Maine.....	101	109
New Haven.....	84	111
Central New England.....	340	109
Rutland.....	111	114

The principal passenger-carrying roads are the Maine Central, Boston & Maine, and New Haven; the passenger traffic of the Central New England is negligible. On the one hand, the New Haven, the passenger traffic of which is apparently more remunerative than that of any other of the complainants, receives 56 per cent of its revenues on freight traffic which it interchanges, comprising 67 per cent of its total traffic, while the Central New England, on the other hand, receiving 94 per cent of its revenues upon 96 per cent of its tonnage from interchanged freight, has a greatly disproportionate passenger operating ratio.

Another factor prominently brought to the fore and asserted to be one of the bases upon which we should increase the divisions of the complainants is per diem, or car hire. In *Proposed Increases in New England, supra*, the movement of traffic between New England and other sections of the country was shown to be "poorly balanced." "For every three carloads of manufactured products moving west from New England five carloads of raw materials move eastbound into New England." In 1919 the New Haven received 779,491 loaded cars and delivered to its connections 332,487 loaded cars. The cars of other carriers are not returned as fast as they are received. Prior to the adoption of per diem charges in 1902, car hire was on the basis of mileage at the rate of 6 mills per car-mile. The initial per diem charge of 20 cents per car per day was based on an average of  $33\frac{1}{3}$  miles per car per day; New England then was averaging about 15 miles per car per day; hence the New England lines were adversely affected by the substitution of per diem for mileage. Whether or not other eastern lines were averaging materially less than  $33\frac{1}{3}$  miles per car per day is not disclosed. The charge on November 1, 1920, became \$1 per car per day. If the mileage charge had been increased proportionately to the increase in the per diem charge, based on the freight-car days and freight-car mileage in New England in 1919, the mileage charge



would have amounted to approximately \$17,645,000 less than did the per diem.

In 1918, on the basis of 2,409,688 freight cars reported to the American Railway Association, the average cost per car was \$955.61; in 1919, on the basis of 2,680,684 cars reported, \$1,032.88; in 1920, based on the actual cost of the cars reported in 1919 plus estimated cost of new cars, \$1,066.77. The new equipment, 158,805 cars, cost on an average \$3,045.66 per car. On the basis of the average of the actual cost for old cars and estimated increased cost of present maintenance, plus cost of all of the new cars which have been added, including those ordered, the average cost of ownership is about 99.58 cents per car per day.

One of the primary purposes of the per diem arrangement is to increase the use of freight equipment through expediting its movement and avoiding detention. Although the charge is intended to cover the cost of ownership, including maintenance, depreciation, taxes, interest, and other allocations incident to ownership, per diem savors of a penalty. The New Haven was a creditor road to and including the year 1915 and for seven months in 1919. The Boston & Maine reduced the number of its freight cars by 5,379 in the period December 31, 1911, to December 31, 1919. Defendants claim that the New England roads could avoid a debit per diem balance by adding to their equipment. Complainants state that they would have purchased more cars if they had been able to do so, but challenge the claim that in this way a debit balance could be avoided. The New Haven met the situation when per diem was established by a liberal purchase of cars and for a time was a creditor road; but this has seldom been the case since 1915. Complainants point out that they receive five loaded cars for every two loaded out, so that they have a surplus of empties. The car service rules forbid them from sending out their own cars empty when, as always, they have foreign empties to return. The result is, they say, that there are more foreign cars on their lines than there are New England cars on outside lines, except when car shortage is so acute that empties are moved on emergency orders.

The record indicates that per diem has never been a factor specifically taken into account in the determination of divisions. If it were so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under the joint rates. It was further suggested for defendants that if debit balances for per diem were made a factor in increasing divisions, the incentive to purchase new cars would be gone.

The New England woolen mills use in manufacturing approximately 60 per cent of the wool consumed in the United States. New England contains within its borders 28.6 per cent of the cotton-manufacturing establishments of the United States, embracing about 40 per cent of the total capitalization of all such industries and 53.4 per cent of the total number of spindles. These mills use 36 per cent of the raw cotton consumed in this country. New England's production of paper and paper board is about 27 per cent of that of the United States. Maine, New Hampshire, and Massachusetts produced 52.1 per cent of the boots and shoes manufactured in the United States in 1914. Massachusetts produces more leather belting, boot and shoe cut stock, rubber boots and shoes, envelopes, motor bicycles, and parts than any other state. Connecticut ranked first of all states in the production of clocks, cutlery, edged tools, and hardware. But no coal is produced in New England. It has no cement mills; and only one iron mine and four small blast furnaces. It produces only 4.4 per cent of the lumber and 5.7 per cent of the brick of the United States. On the other hand, the states comprised in eastern trunk line and central territories produce 81 per cent of the bituminous and anthracite coal, 87.9 per cent of the pig iron, 12.6 per cent of the lumber, 55 per cent of the cement, and 60.4 per cent of the brick produced in this country, while 82 per cent of the blast furnaces are located within their borders. These commodities, which New England lacks, move in volume in the states west of the Hudson River and are generally considered to be the mainstay of the carriers which transport them. A percentage comparison of the freight tonnage of New England and other eastern carriers shows that New England has larger percentages of the products of agriculture, animals, forests, manufactures, commodities carried at miscellaneous carload rates, and less-than-carload traffic than have the other eastern roads, but the products of mines originating on New England lines constitute only 17.84 per cent of their total traffic as compared with 66.84 per cent on the lines of the other eastern carriers. These facts, of course, have a most important bearing in a rate case, but our function in a divisional case has been considered to be an equitable, just, and reasonable apportionment of earnings derived from the carriage of a particular commodity as between the carriers participating in its transportation and the fact, for example, that a coal-carrying road has derived its principal revenue therefrom has not operated to decrease the divisions it received for the carriage of merchandise traffic. And, manifestly, if a particular traffic must bear its proper and proportionate share of operating costs and may only earn its due proportion of the total earnings of a particular carrier, it would be inequitable to increase the divisions of a carrier having a large per-

centage of less-than-carload traffic because another carrier with which it participated in the transportation of such traffic received the major portion of its earnings from coal or some other commodity moving in greater volume.

Short-haul less-than-carload traffic is generally conceded to be, in the main, unremunerative. All of that interchanged between complainants and defendants, the percentage of which to the total tonnage interchanged does not appear, although it comprises 13.92 per cent of the total tonnage of complainants as contrasted with 3.78 per cent of the total tonnage of the other roads in the eastern group, must be distributed by the complainants when it originates in territory other than New England, and, conversely, all the interchanged less-than-carload traffic originated by the complainants must be distributed by the defendants. It must be transferred and handled at intermediate points, and, except in respect of that transported intact in through cars, the load decreases as the haul increases. It is impossible on the record to separate the less-than-carload traffic interchanged between the complainants and the defendants from the total tonnage interchanged, nor can we say that, because it is stated that complainants originate a larger percentage of less-than-carload traffic than is originated by the defendants, that fact should be given weight in determining that the divisions of the complainants "as a whole" are unjust.

Defendants point to the fact that the complainants compute their average haul of revenue freight by showing the total number of tons of revenue freight as 87,501,565 for the calendar year 1918. In another connection they show the freight interchanged with trunk line and Canadian roads, interchanged interline New England and local to each New England road for the six alternate months December, 1918, to October, 1919, converted into a constructive year on the basis which the freight revenues bore to the total freight revenues for the year ended October 31, 1919, as 53,854,258 tons, of which 9.6 per cent was interline in New England. This is unduplicated tonnage, but it is apparent that a considerable volume of tonnage must have had a two-or-more-line haul or was so-called passing-over traffic for the complainants and as to which they were intermediate carriers.

The freight traffic interchanged between the lines of the complainants and the trunk and Canadian lines, defendants herein, for a constructive year ended October 31, 1919, was 84,099,720 tons—merchandise, 20,095,420 tons; coal, 14,004,800 tons. The total freight tonnage of the complainants for the same year was 53,854,253 tons—merchandise, 38,300,990 tons; coal, 15,553,263 tons. The interline New England merchandise tonnage was 5,087,025 tons; coal, 100,853 tons.

The local merchandise was 13,118,545 tons; coal, 1,448,110 tons. The tonnage interchanged with the trunk and Canadian lines originated or terminated on the lines of the complainants in the following amounts:

	Tons.	Revenue.
New Haven.....	16,812,968	\$28,068,510
Boston & Maine.....	11,636,278	23,860,608
Maine Central.....	2,127,238	4,066,087
Central Vermont.....	1,146,744	3,126,674
Central New England.....	1,066,712	5,700,666
Rutland.....	873,187	1,567,373
Bangor & Aroostook.....	432,573	879,863
Total.....	34,096,720	\$ 67,272,648

<sup>1</sup> Based on rates in effect prior to Ex Parte 74.

Tonnage was interchanged with complainants' direct connections in the following amounts:

Direct connecting carrier.	Merchandise other than coal.	Coal.
	Tons.	Tons.
Canadian Pacific.....	1,743,651	35,978
Central of New Jersey.....	1,651,994	2,311,261
Delaware & Hudson.....	2,096,901	3,479,360
Delaware, Lackawanna & Western.....	547,967	17,002
Erie.....	847,136	631,554
Grand Trunk.....	1,897,122	.....
Lehigh & New England.....	124,360	414,584
Lehigh Valley.....	745,616	824,219
Long Island.....	352,960	.....
New York Central, including Boston & Albany.....	5,906,669	2,521,257
New York, Ontario & Western.....	64,225	465,993
Pennsylvania.....	3,279,664	3,403,140
Other trunk and Canadian lines.....	151,798	262
Total.....	20,066,420	14,004,800

This tonnage and revenue were divided among the complainants in the following percentages:

	Total tonnage.	Total revenue.
	Per cent.	Per cent.
New Haven.....	67	56
Boston & Maine.....	59	54
Maine Central.....	37	36
Central Vermont.....	71	65
Central New England.....	96	94
Rutland.....	78	67
Bangor & Aroostook.....	27	23
Average.....	64	56

The following statement of the freight traffic interchanged between New England and all other territories for a constructive year ended October 31, 1919, shows the percentages of the total tonnage inter-  
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changed between each territory and what percentages of the total revenues thereon the carriers of each territory received:

	Tonnage, percent- age of.	Percentage of total revenue.			
		New England.	Trunk line.	Central freight.	Other carriers partici- pating.
Eastern trunk.....	61	46.6	53.2	0	0.2
Central.....	27	34.5	33	27	5.5
Western.....	3.7	20	10	15	55
Canadian.....	3	35.5	1.5	1	62
Southern.....	2.8	21	25.5	3.5	50
Transcontinental.....	2.5	7.5	7	12.5	73

On 88.4 per cent of the tonnage which was interchanged between New England and eastern trunk line and central territories the complainants received 42.3 per cent of the total revenue. This tonnage is divided among complainants' connections in percentages as follows:

Road.	Tonnage.	Revenues accruing to all lines west of New England.
Central of New Jersey.....	11.6	6.5
Delaware & Hudson.....	13.1	14.8
Delaware, Lackawanna & Western.....	1.6	2.3
Erie.....	4	6.2
Lehigh & New England.....	1.6	6
Lehigh Valley.....	4.6	3.2
Long Island.....	7	2
New York Central (including B. & A.).....	25	31.6
New York, Ontario & Western.....	1.6	6
Pennsylvania.....	19.6	17.3

The remaining 11.6 per cent of this tonnage was interchanged with Canadian roads, which received 14.9 per cent of the revenue thereon.

There is no specific statement that all of the tonnage interchanged moved at joint rates. It is shown that about 60 per cent of that interchanged between the Bangor & Aroostook and its connections moved under joint rates, and a considerable portion of that of the Maine Central moved under combinations upon Maine junctions.

The percentages the complainants, the trunk lines, and the central territory lines received of the total through revenue, 35.1, 35.7, and 9.6 per cent, respectively, may be considered in connection with the haul. For the calendar year 1918 the average haul of revenue freight was: for complainants, 100.6 miles; for the eastern trunk and central territory lines, 153.39 miles. Including the Canadian Pacific and the Grand Trunk, the average haul in New England is increased to 112.19 miles, and by including carriers other than those used in reaching the average haul of 153.39 miles the average haul of revenue

freight of the trunk and central territory lines is decreased to 144.77 miles. The average haul of the New Haven for the 11 months ended May 31, 1919, was: local, 60.11 miles; interline, 65.32 miles; interchange, 136.29 miles. The average hauls of the Central of New Jersey, Delaware, Lackawanna & Western, Lehigh & New England, and the New York, Ontario & Western, on traffic destined to points on the New Haven which they originated on May 26, 1920, when a study was made, were less than that of the New Haven. Other than those lines, the average haul of the New Haven on traffic interchanged with its connections which either originated or terminated on that road was less than that of any road embraced in the study.

The merchandise freight was interchanged between the complainants and the direct connecting lines shown via the junctions named in the following statement, which also shows the revenue received by the complainants and by all other lines participating in the transportation. Figures are for the constructive year ended October 31, 1919.

Junction.	Direct connecting carriers.	Tons.	Revenue of complainants.	Revenue of all other lines.
<b>New Haven via:</b>				
Harlem River.....	Penn., C. N. J., L. V., L. I.	4,217,898	\$11,692,296	\$18,188,345
Communipaw.....	C. N. J., L. V.	908,756	2,836,837	2,164,008
Fresh Pond Junction.....	L. I.	190,147	731,786	186,355
<b>Central New England:</b>				
Maybrook.....	Erie, L. & H., N. Y. O. & W.	903,996	2,351,661	6,839,044
Beacon.....	N. Y. C.	230,693	220,034	240,151
Campbell Hall.....	N. Y. C., L. & N. E., N. Y. O. & W.	42,602	111,548	146,592
<b>Central New England (Lehigh &amp; Hudson):</b>				
Easton.....	C. N. J., L. V., D. L. & W., Pa.	875,615	1,315,858	1,927,471
Port Morris.....	D. L. & W.	545,214	1,326,256	3,480,449
Philipsburg.....	Penn.	26,263	57,714	110,021
<b>Central New England (Lehigh &amp; New England):</b>				
Belvidere.....	C. N. J., L. V.	12,605	14,986	44,829
<b>Boston &amp; Maine:</b>				
Boston Junction.....	N. Y. C.	2,235,315	5,114,293	14,607,360
Mechanicville.....	D. & H.	2,118,456	4,514,616	9,511,693
Newport.....	C. P.	803,747	2,265,699	6,276,215
Troy.....	D. & H., N. Y. C.	331,036	918,009	806,026
Sherbrooke.....	G. T.	318,985	759,131	835,097
Lanoxville.....	C. P., G. T.	66,896	113,101	162,444
<b>Maine Central:</b>				
Vanceboro.....	C. P.	906,523	1,896,360	1,297,854
North Stratford.....	G. T.	150,441	277,813	806,313
Mechanic Falls.....	G. T.	129,653	142,425	499,093
Portland.....	G. T.	80,577	102,606	235,814
Milltown.....	C. P.	69,413	30,881	98,597
Mattamoras.....	C. P.	48,204	63,496	43,267
Danville Junction.....	G. T.	36,357	76,425	213,820
Yarmouth Junction.....	G. T.	27,198	51,006	160,695
<b>Central Vermont:</b>				
St. Johns.....	G. T.	1,210,241	3,314,686	4,259,014
St. Lambert.....	G. T., Q. M. & So.	48,337	79,085	122,633
Farnham.....	C. P.	18,089	31,243	94,643
<b>Central Vermont and Rutland:</b>				
Bouses Point.....	D. & H., G. T.	83,454	126,729	242,129
<b>Rutland:</b>				
Norwood.....	N. Y. C.	854,219	903,216	1,455,470
Chatham.....	N. Y. C.	112,361	296,723	398,880
Rutland.....	D. & H.	75,315	124,985	255,330
Noyan Junction.....	G. T., Q. M. & So.	55,723	153,893	142,587
<b>Bangor &amp; Aroostook:</b>				
St. Leonards.....	C. N.	106,949	251,010	108,416
Brownville Junction.....	C. P.	32,230	69,502	201,850

In addition to the foregoing, 205,422 tons of merchandise freight moved via other junctions where the tonnage interchanged was light. The revenues of the complainants thereon was \$362,213; that of all other lines, \$436,151. Freight amounting to 5,456,320 tons moved to or from Boston & Albany points and points west of the Hudson River, of which 3,037,790 tons consisted of traffic to and from points west of the Hudson River via Boston & Albany junctions from and to points on other New England lines. The revenue of the complainants thereon was \$5,215,836; that of all other lines, \$18,444,554.

The coal was interchanged principally at the junctions shown in the following statement, which also shows the amounts of revenue received thereon by the complainants and by all other lines:

Junction.	Tons.	Revenue received by complainants.	Revenue received by all other lines.
Easton, Pa.....	2,595,945	\$4,031,606	\$4,757,317
Harlem River, N. Y.....	3,416,007	4,076,584	6,003,596
Maybrook, N. Y.....	1,400,908	2,044,134	2,134,614
Mechanicville, N. Y.....	3,235,990	4,994,963	6,106,553
Rotterdam Junction, N. Y.....	1,633,038	2,797,801	3,994,108
Boston & Albany junctions.....	433,388	299,759	1,108,723
All other junctions.....	989,024	1,073,943	2,106,864
Total.....	14,004,300	19,218,780	25,208,799

Upon the merchandise tonnage of 18,205,570 tons, transported interline and locally in New England, 33.8 per cent of their total tonnage, complainants received 43.6 per cent of their total revenues.

If the revenues shown of all the carriers were increased 40 per cent and \$25,000,000 deducted from the proportions to accrue to the eastern trunk line and central territory carriers, and added to the proportion to accrue to the complainants, the New England lines would receive 44.45 per cent of the total revenue; the trunk lines 29.32 per cent; lines in central territory 6.69 per cent; and the other lines 19.54 per cent. If complainants have no means of obtaining increased revenues save from the traffic which is interchanged with their connections and must have their revenue needs met from increased divisions upon this traffic, it is obvious, since a forecast for the year ending August 31, 1921, indicates they may fail by at least \$27,000,000 to meet their fixed charges, that the revenues they should receive from such traffic would be more than doubled.

#### DIVISIONAL ARRANGEMENTS.

Divisional arrangements between the complainants and the defendants apportion the revenues derived from myriads of rates.

Complainants have not essayed to be exhaustive in their presentation, having shown about 8,000 rates intended to typify and illustrate the present arrangements from points on all of their lines, except those of the Bangor & Aroostook. The points selected were Poughkeepsie and Johnsonville, N. Y.; Stamford, Hartford, and Winsted, Conn.; Concord and North Conway, N. H.; Boston, Springfield, Fitchburg, Haverhill, New Bedford, Greenfield, and Fall River, Mass.; Westerly, R. I.; and Portland, Me., on the Boston & Maine and New Haven; St. Albans, Montpelier, and Sharon, Vt.; Palmer and Willimantic, Mass., on the Central Vermont; Swanton, Burlington, and Bellows Falls, Vt., on the Rutland; and Lewiston, Rockland, Bangor, Rumford Falls, and Machias, Me., on the Maine Central. Such trunk line points as New York, Syracuse, Utica, Rochester, Binghamton, and Buffalo, N. Y.; Newark, N. J.; Philadelphia, Scranton, Altoona, Sayre, Harrisburg, and Pittsburgh, Pa.; central territory points such as Youngstown, Cleveland, and Cincinnati, Ohio; Indianapolis, Ind.; Grand Rapids and Detroit, Mich.; Chicago and Cairo, Ill.; and Louisville, Ky.; southern points such as Atlanta and Savannah, Ga.; Nashville and Memphis, Tenn.; Birmingham, Ala.; Jacksonville, Fla.; and New Orleans; and Pacific coast points such as Portland, Oreg.; Spokane and Seattle, Wash.; Los Angeles and San Francisco, Calif., were also selected.

The history of the majority of the divisions is unknown; many of them were established prior to the time when witnesses entered the service of the complainants. Joint rates between the New Haven or its predecessor, operating from New York to Springfield, Mass., and the Pennsylvania north of Washington, D. C., were established in the early seventies; the present divisions between those roads were established in 1880. The most recently established divisions appear to have been those between the New Haven and New York Central on traffic via the Boston & Albany. In some instances the junction points via which the divisions applied have been changed, notably from Harlem River to Maybrook and Campbell Hall, N. Y. The divisions of the New Haven on traffic from points on its lines to points in central territory on the line of the New York Central were revised and increased in 1906. Some of the roads which now form parts of the systems of the Boston & Maine and the New Haven were comparatively short lines, each of which had its preferred routes and bases of divisions. The evidence clearly indicates that the whole division blocking, which the Boston & Maine and New Haven witnesses denominate as "absurd," "illogical," and "a mess of inconsistencies," was pieced together without system; the divisions are inheritances. For example, between points on the New Haven-Central New England and lateral lines and points on the Pennsyl-



vania, Lehigh Valley, Central of New Jersey, Philadelphia & Reading, Baltimore & Ohio, and Delaware, Lackawanna & Western, the Boston block runs from Boston almost to New London, Conn., on the south, to Worcester and Springfield, Mass., on the west; is intersected by the Provincetown block, which applies at Walpole and Medfield Junction, and extends north to Fitchburg and Lowell, Mass.; by the Pascoag block, which applies from Dike street, Providence, R. I., and Harrisville, from which the Boston per cents plus 4.2 cents per 100 pounds apply, and jumps across the Hartford block, extending from Harlem River, via New Haven, Saybrook Junction, and New London, Conn., on the south, north to Springfield, and across the Westfield block, extending north from near by New Haven to Turners Falls and Shelburne Junction, Mass., to the western portion of Connecticut and Massachusetts, applying from New Britain, Conn., south almost to Naugatuck and Bridgeport, and south of South Norwalk, Conn. It also applies west from Fishkill Landing, Rhinecliff, Canaan, Vandeusenville, and State Line, N. Y., and Pittsfield, Mass. A small portion of the Hartford block is west thereof. The foregoing statement is vaguely illustrative of the large areas embraced and the absolute lack of consistency in the present blocking. Complainants do not seek to justify, but frankly condemn it; they have merely taken what the small lines had and have allowed such pieces to remain without change or material revision to remedy the long-existing condition. While there may be some portions of the present framework which could be retained, complainants' traffic witnesses concede that the entire structure, if such it may be called, must be rebuilt.

Mileage is a common or general basis of divisions; that of each road being expressed in the percentage it bears to the total mileage involved. This mileage is computed on an actual, constructive, or prorating basis from or to particular points or from or to division blocks. Percentage or mileage divisions are the more numerous. Less commonly, rates are divided arbitrarily or specifically. Specific amounts to particular carriers, generally stated in cents per 100 pounds or other unit, are allowed for terminal and other services, such as for bridge tolls, ferries, and water hauls, the latter generally being on the basis of constructive mileage. These amounts are sometimes deducted before and sometimes after prorating, and accrue to the line performing the service. There are thousands of percentage divisions between the complainants and the defendants, which are multiplied indefinitely by the number of routes over which they apply, and they differ with many circumstances, including competitive conditions. Some rates, particularly those between the eastern group and the southern group, are divided on the basis of specifics. Arbi-

traries are frequently allowed to an originating road. For example, allowances are made for floatage service from the float bridges of the New Haven at Harlem River to those of the Pennsylvania at Greenville, N. J., across New York harbor, and for special services of connecting railroads, as, for example, the Union Railroad, operated by the Pennsylvania, at Baltimore, Md. At many points on the Maine Central and the Boston & Maine, exclusive of the latter's Fitchburg division but including Boston, an arbitrary of 1 cent per 100 pounds, which has been maintained without change, notwithstanding increases in rates, accrues to these carriers before prorating. These carriers insist that the arbitraries should be increased the same percentages as the rates were increased; their connections contend they should not be so increased. It appears that the New York Central receives arbitraries of from 2 to 4 cents per 100 pounds on all traffic over its New York division into New York. In addition to the foregoing there are branch-line arbitraries; for example, those on the Wood River branch and Wickford branch of the New Haven. The "*Steamer Maryland*" arbitraries of 8.5, 6.3, 6.3, 4.2, 4.2, and 4.2 cents per 100 pounds, first to sixth class, respectively, are in controversy. These apply to a floatage service across New York harbor and accrue to the New Haven. This record affords no ground upon which to determine the contentions of the parties in respect of the allowances and arbitraries referred to. The rebuilding of the blocking now obtaining between points on the lines of the complainants and points on the lines of the defendants would of itself be an immense task for the accomplishment of which the record provides no basis; the revision of all of these divisions individually would require expert, painstaking, and exhaustive study extending over a long period of time.

Complainants assert that they are receiving smaller divisions of the joint rates than would result from the apportionment of the rates exhibited on the basis of mileage as to approximately 61 per cent of the class rates from 5 of the principal tonnage-producing points on the Boston & Maine, the New Haven, and the Maine Central to 11 points in eastern trunk line territory; to 5 points in central territory; to 8 points in Canada; to 5 points in southern territory; and to 4 points on the Pacific coast. That is to say, that of 2,162 rates and divisions submitted in evidence, complainants received from 1,328 of this number a smaller percentage of the Anderson class-rate scale than the other carriers received of the local rates from the points via which the traffic was interchanged. Notwithstanding, however, that complainants in numerous instances receive revenue in excess of what they would receive if the rates divided strictly on a mileage basis, they con-

tend, as previously observed, that as originating or receiving carriers of a very large percentage of their total traffic, and for the other reasons stated, they are entitled to greater divisions than would accrue from the application of a mileage basis alone and that the consolidation of the smaller lines into the systems now composing the lines of the complainants has enabled them to haul traffic via more direct routes and thus lessen the distance theretofore involved. On the other hand, the hauling of traffic via the more direct routes and the division of rates on the basis of the actual or constructive distances via the indirect routes previously used necessarily affords the complainants greater mileage in the division of the rates.

#### THE THEORY OF THE EXHIBITS.

In exhibited rates and divisions the complainants show the points of origin and of destination; the distances between them; the mileage in New England to the interchange point via which the traffic moves and the mileage from that point to destination; the per cents of the total mileage within and without New England; the joint rates, first and sixth classes usually, from, to or between the points of origin and destination; the Anderson scale, first and sixth classes, for the distance from or to the point of origin in New England to or from the interchange point; the local rate, outside of New England, from or to the interchange to or from the destination point; the revenues, in cents per 100 pounds, accruing, on the basis of the divisions, to the complainants and to the defendants; the per cents of such revenues to the Anderson-scale class rate and to the local rate west of the interchange point; the earnings per ton-mile in cents derived from the various rates; the amount in cents; and the per cents thereof accruing to the complainants and to the defendants in excess of or less than a mileage prorate. These exhibits are supplemented by charts showing the divisional blocking, accompanied by statements of actual distances from and to particular groups east and west of the gateways; the prorating distances, and whether the latter are less or more than the former. The exhibits were not submitted to show that any particular division is unjust, unreasonable, or inequitable; no attempt was made to deal with divisions individually; and all of complainants' traffic witnesses stated they dealt with the situation only "as a whole." One witness for complainants said "there are spots as shown on this exhibit indicating that the division is a fair division." Complainants lay stress on the fact that these exhibits show that in a substantial number of cases their division is less than would be received under a mileage prorate, and that in many their division, compared with

the Anderson scale for the same distance, is relatively lower than the division received by defendants, measured by their local rates. Thus, summarizing three of their exhibits, they show that out of 2,162 joint rates listed, they received from 1,328 a smaller percentage of the corresponding Anderson class rate than defendants received of the local rate for their portion of the haul. Complainants also contend that as originating or receiving carriers of a very large portion of the traffic interchanged, they are entitled to greater divisions than would accrue from the application of a mileage basis alone.

It is contended for defendants that the exhibits submitted are not sufficiently complete to afford the basis for a revision of the existing divisions, and that they are not typical of the entire situation because of the comparatively few points used and the absence of tonnage figures. The direct comparisons are of the hauls in New England with those outside of New England, irrespective of whether the distances are the same or less or greater in one instance than the other. In order to obtain an accurate comparison of a short haul in New England with a short haul in trunk line or central territory, for example, it would be necessary to consult different exhibits and weigh the circumstances and conditions applicable in each instance, which are not fully disclosed. Medial points in division blocks of origin and of destination, weighted with their proper share of the tonnage of the group, and considered in connection with all the circumstances and conditions surrounding the rate sought to be divided, accompanied with consideration of the abilities or disabilities of the participating carriers, would seem to more fairly portray the situation. In the establishment of mileage blocks it is, of course, possible in the bargaining of divisions for one carrier to so arrange its tonnage-producing points that the greatest measure of constructive mileage will apply therefrom and necessarily a mere comparison of distances is not illuminating.

As has been observed, no separate statement of the divisions accruing to the Bangor & Aroostook was submitted. One of its principal junction points is Brownville Junction, Me., where it connects with the Canadian Pacific. Through that junction, via the Canadian Pacific, and Adirondack Junction, Quebec, joint class rates apply from points on the Bangor & Aroostook to points on the New York Central. There are also commodity rates which apply between points on the Bangor & Aroostook and points on the New York Central via the Maine Central, Boston & Maine, and Boston & Albany. The class rates are made by the addition of arbitrary proportions established by the Bangor & Aroostook, which accrue to it in the division of the rates. The commodity rates are similarly constructed. The record discloses no basis upon which any

conclusion can be reached in respect to the arbitrary proportions of the Bangor & Aroostook.

Of the tonnage interchanged between the Rutland and its trunk line connections, the New York Central and the Delaware & Hudson, 47 per cent consists of coal, the divisions upon which are not shown. An approximately equal amount of merchandise tonnage is interchanged with the New York Central at Norwood and Chatham, a large percentage of which is fluid milk and cream and their products, to which divisions shown by the complainants do not apply.

Two-thirds of the capital stock of the Central Vermont Railway is owned by the Grand Trunk Railway. The road operates through a sparsely settled country. American and Canadian customs work at St. Albans, Vt., a port of entry, results in much delay to equipment and extra switching, entailing an expense of about \$84,000 a year. Practically all of the tonnage interchanged is with Canadian roads. There are no divisions of joint rates between the Central Vermont and the New York Central west of Buffalo; there is comparatively little evidence of the divisions east of Buffalo. Other than the expense incident to the customs work, the principal expenses to which particular attention is drawn are wages increased from 87 to 340 per cent since the test period, and the cost of keeping the line clear of snow and ice and of high water, the average therefor, for the last nine years, having been about 1 per cent of the total revenues.

The road connects with the Grand Trunk at St. Johns, Quebec, and at Swanton, Vt. The principal divisions shown by it apply in connection with the New Haven via Harlem River. The division of the rates between the Central Vermont and the New Haven and Grand Trunk, respectively, are not shown.

The main line of the Maine Central extends from Portland to Vanceboro, Me., connecting there with the Canadian Pacific; it also connects with the Bangor & Aroostook at Northern Maine Junction. A secondary line is operated through Maine, New Hampshire, and Vermont to Lime Ridge, Canada, connecting there with the Canadian Pacific and the Grand Trunk railways. Of the 8,000,000 tons of freight handled annually, consisting principally of lumber and forest products, lime and granite, products of agriculture, canned goods, cotton and woolen goods, and boots and shoes, 18 per cent is "overhead," 31 per cent local, 32 per cent interline New England, and 37 per cent interchange.

There are no joint class rates between points on the Maine Central west and north of Lewiston, Mechanic Falls, Brunswick, and Bath, Me., and eastern trunk line territory. On this traffic the Maine Central receives proportional rates beyond Brunswick in addition to divisions of the Brunswick rates. On the mountain division from Portland to Lime Ridge and on its Rockland division, the Maine

Central has percentage divisions applicable in connection with eastern trunk lines, subject to a terminal deduction of 2 cents per 100 pounds before prorating, which accrues to the Maine Central. East and north of Brunswick there are some joint rates divided by allowing the Maine Central proportional arbitraries in addition to the regular Brunswick basis of divisions.

On central territory traffic, the Boston rate applies to and from Maine Central stations east of Portland to and including Rockland, Mount Desert Ferry, Washington Junction, Milford, Norridgewock, and Rumford, Me., and the entire mountain division. This territory is divided into the Rockland group, which includes territory east of Portland to and including Brunswick, Bath, Lewiston, and Mechanic Falls, and points from Portland to Lime Ridge, Quebec, and the Ellsworth division group. The Maine Central receives a terminal deduction of 2 cents per 100 pounds before prorating in connection with both the Rockland and Ellsworth group percentages.

There are no through class rates between territory beyond the Boston rate group and central territory. The Maine Central receives in division arbitraries added to the Boston rate to this territory, the balance being divided on the Ellsworth basis. There are some joint commodity rates to and from points beyond the Boston group in the division of which the Maine Central receives agreed proportional arbitraries, the balance being divided upon the Ellsworth group basis.

To and from points on its Rangley division, Mechanic Falls and north, on traffic interchanged with the Grand Trunk at Mechanic Falls, the division is made on the basis of allowing the Maine Central graded specifics instead of the percentage basis.

As prorating mileage from the Rockland group, the Maine Central receives 117 miles. The actual distances to representative points from Portland are: to Lewiston, 37 miles; Bath, 38 miles; Mechanic Falls, 45 miles; Lime Ridge, 208 miles. The Rockland group includes Rockland, 86 miles from Portland, with an allowance of 30 miles for the Bath ferry. As prorating mileage from the Ellsworth group the Maine Central receives 179 miles, the actual distance from Portland to Mount Desert ferry. The actual distances from other points in this group range from 84 to 137 miles.

The principal interchange of the New Haven is with the Pennsylvania, Central of New Jersey, Lehigh Valley, and Long Island through Harlem River. Complainants have not submitted any evidence in respect of the divisions to points on the lines of the Lehigh Valley and the Long Island.

As stated, the first divisions were established via Harlem River between the New Haven and the Pennsylvania; the blocking of the Baltimore & Ohio was determined with reference to that of the

Pennsylvania, and that of the Lehigh Valley is similar. Originally, the New Haven line proper took prorating mileages of 100 miles to Springfield and 200 miles to Boston. The Philadelphia, Pa., Baltimore, Md., and Washington, D. C., blocks on the Pennsylvania took 100, 200, and 250 miles, respectively. Thereafter the groups expanded westward until there are now 52 mileage blocks on the Pennsylvania, and with the expansion the New Haven received higher mileage allowances, drawing, for example, 222 miles for the Hartford group, plus 60 miles for the float service across New York harbor. In connection with traffic to Washington proper as contrasted with the Washington group, an allowance of 8 cents per 100 pounds was made to the Pennsylvania for the use of a toll road known as the Union Railroad, the bonds of which were guaranteed by the city of Baltimore. Through a tunnel at Baltimore it connected the Philadelphia, Washington & Baltimore and the Baltimore & Potomac, and its track was used for 8 miles. The road is now owned by the Pennsylvania.

To test the belief of the defendants west of the Hudson River that the divisions to the New England lines are liberal, a comparison of the revenues received by the New Haven from or to Greenville, N. J., on traffic from Boston, Fall River, Hartford, Winsted, and Poughkeepsie to Philadelphia, Baltimore, Altoona, Harrisburg, and Pittsburgh was made with divisions of the same rates on 50-mile blocks with a 50-mile terminal allowance for each road which performed a terminal service, with and without a deduction of 60 miles for the float service across New York harbor. The comparison to Pittsburgh will be sufficiently illustrative. The revenue is shown in cents per 100 pounds:

	Boston.		Fall River.		Hartford.		Winsted.		Poughkeepsie.	
	Classes.									
	1	6	1	6	1	6	1	6	1	6
Revenue shown by complainants.....	39	13.3	47.2	16	46	12.3	39	13.3	36.3	12.1
50-mile block and 50-mile terminal.....	38.1	12.9	38.1	12.9	29.1	9.9	29.1	9.9	27	9
With deduction for float service.....	41.8	14.2	41.8	14.2	33.8	11.5	33.8	11.5	31.5	10.5

In a majority of the instances the New Haven has a better revenue than it would have under either of the stated bases. The allowance of a 50-mile terminal is a well-recognized basis of dividing rates, and is made to cover the terminal expense.

These comparisons give no weight to tonnage. At the request of the defendants several of the complainants furnished lists of the most important tonnage-producing points on their lines; 48 points

on the New Haven, 30 on the Boston & Maine, 15 on the Maine Central, and 9 on the Central Vermont. The actual distances from these points to Jersey City are compared with the prorating mileages on traffic destined to certain division blocks on the Pennsylvania; the first block including principally points in Pennsylvania, such as Altoona, Harrisburg, and Pittsburgh; the second, Atlantic City and Cape May, N. J.; the third, Baltimore, Philadelphia, and Washington; the fourth, points in New York such as Buffalo, Jamestown, and Rochester; and the fifth, points in Maryland, Delaware, and Virginia, such as Crisfield, Md., Delmar, Del., and Old Point Comfort, Va. To the first block the New Haven draws 393 miles, or 282 miles, dependent upon the block in which the point of origin is located. The minimum distance to Jersey City is from Stamford, Conn., 41 miles for which the New Haven draws 282 miles; the maximum distance is from Watuppa, Mass., 248 miles for which the New Haven draws 393 miles. These distances include the actual distance by water from Harlem River to the Jersey shore, without extra allowance therefor. The total actual miles aggregate 7,640; the New Haven draws a total constructive mileage of 14,646 miles. The other exhibits show substantially similar results. To 67 of the most important tonnage-producing points on the Pennsylvania, the actual mileage of that road aggregated 20,881; the prorating mileage 23,944 miles. The important tonnage points on the Pennsylvania are generally near the termini of the blocks; hence the actual and constructive mileages closely correspond. Although the actual mileage of the Baltimore & Ohio from and to Pittsburgh is greater than that of the Pennsylvania, it has, due to competition, accepted the prorating distances originally allowed the Pennsylvania. The prorating mileages of the Baltimore & Ohio to 32 important tonnage stations exceed its actual distances to those stations by only 5.3 per cent whereas the prorating mileages of the New Haven on traffic to those points exceed its actual mileages by 70 per cent. The mileages allowed the New Haven on traffic interchanged with the Lehigh Valley via Harlem River aggregated 26,876 miles to important tonnage points, as compared with its actual mileages of 15,284 miles. These figures are very general, but no more so than those submitted by the complainants.

The only direct connection of the Central of New Jersey with any of the complainants is with the New Haven at Jersey City using car floats across New York harbor. There is another route via Easton, Pa., and Maybrook via which traffic is handled in connection with the Lehigh & Hudson River, the haul of the Central of New Jersey being 73 miles less than that via the direct route. The evidence submitted by the complainants of divisions in effect between them



and the Central of New Jersey is meager, although reference was made in the amended complaint to certain divisions applicable in connection with the Boston & Maine and this defendant via Mechanicville and Wilkes-Barre, Pa. A portion of the divisional arrangements was explained by a witness for this defendant. It is sufficient to say that a test of the 14 percentage bases by a mileage prorate and by the 50-mile block plan shows that under either plan the New Haven would receive less revenue than it now receives.

Taking stations submitted by the New Haven as having handled the largest amounts of received and forwarded tonnage based on the month of August, 1920, other than the junctions between the New Haven and the Boston & Albany, it is shown that the shortest haul from such points on the New Haven to Boston & Albany junctions is 10 miles, for which the New Haven receives 321 miles on traffic handled to and from points on the New York Central and connecting lines west of Buffalo. The longest haul is 116 miles, for which the New Haven also draws 321 miles. To these junctions from 137 points located on the New Haven, each of which in 1906 had 3,000 or more persons, the average distance to the Boston & Albany junctions is 42 miles, for which the New Haven draws either 255 or 321 miles, dependent upon the block within which the point is located. From Boston, Providence, Bridgeport, Hartford, Worcester, and Springfield, via the New Haven to Harlem River, thence to Chicago, Indianapolis, Cincinnati, East St. Louis, Grand Rapids, Mich., and Cleveland, the average percentage received by the New Haven is 25.9; by the Pennsylvania lines east, 39.7; and by the Pennsylvania lines west, 34.4. If these rates were divided on an actual mileage prorate, the percentage of the New Haven would be reduced to 15.7; that of the Pennsylvania lines east increased to 39.3; and that of the Pennsylvania lines west increased to 45.

The only rates and divisions exhibited via Boston & Albany junctions from points on the New Haven were from Westerly, R. I., via Worcester, New Bedford, and Framingham, Mass.; from Stamford, Conn., via State Line, N. Y., to Rochester, Syracuse, and Buffalo, N. Y.; and from Westerly and New Bedford, via the junction points named, to Grand Rapids, Mich. The divisions of joint class and commodity rates between points on the New York Central east of Buffalo and points on the New Haven via Boston & Albany junctions are expressed in specific amounts, that is, the rates are divided upon an arbitrary basis. The divisions were based upon a stipulation by the New Haven that it should receive these specific amounts irrespective of the distance or the measure of the rates, and that it should receive the same revenue in cents per 100 pounds as it then received on traffic to Chicago. The arrangement was

modified in 1903 to provide that, as the rates were increased or decreased, the divisions of the New Haven should be increased or decreased on a prorate basis, and the arrangement was then extended to other divisions and branches of the New York Central east of Buffalo. Since 1906, when the divisions were increased, the New Haven has received 25 per cent of the Chicago rate to and from points in the New Haven group, which is west of Willimantic and New London, Conn., and 20 per cent of the Chicago rate to and from points in the Providence group, which is east of the named points. These percentages, converted into mileages, gave the New Haven 321 miles and 255 miles, respectively, from the New Haven and Providence groups, and these mileages are used in dividing the rates between the New Haven and the New York Central west of Buffalo. Only one point west of Buffalo, Grand Rapids, Mich., located on a branch line of the New York Central, is shown by the New Haven in connection with the divisions applicable via the Boston & Albany junctions to points on the New York Central. From Westerly and New Bedford, 9.2 per cent and 5.5 per cent, respectively, of the total distance is traversed by the New Haven; it receives 27.2 per cent of the first-class rate and 27 per cent of the sixth-class rate from those points to Grand Rapids.

Defendants assert that the evidence introduced by the New Haven affords no indication as to the manner in which the immense traffic between the New Haven and the New York Central and its connections is divided.

The principal junction point between the Delaware & Hudson and the Boston & Maine is Mechanicville, N. Y. From 29 of the 30 important tonnage points on the Boston & Maine to 10 representative points on the Delaware & Hudson; 3 points in eastern trunk line territory and 2 points in central territory, defendants compare the present divisions with those which would result under: (1) actual mileage prorate; (2) 50-mile blocks for each carrier; and (3) 50-mile blocks with additional 50-mile terminal for the originating and the terminal carrier and actual distance for the intermediate carrier. If any of these bases were applied, a material reduction in the revenue of the Boston & Maine would result.

The other principal interchange point of the Boston & Maine is Rotterdam Junction, N. Y., where it connects with the New York Central. The distance from Portland to Rotterdam Junction via Ayer Junction, Mass., is 281 miles; from Boston to the same junction it is 209 miles. For the former the Boston & Maine draws 320 miles; for the latter, 212 miles. On inbound traffic from points on the New York Central via Rotterdam Junction to the 30 important tonnage-producing points on the Boston & Maine, ranging in

distance from 67 to 290 miles from the gateway, the Boston & Maine draws from 212 to 437 miles; the excess prorating distances range from 3 miles to 189 miles. A similar result is shown as to outbound tonnage from the same points. From all of these points save Boston, Fitchburg, Gardner, Waltham, and North Adams, Mass., the Boston & Maine receives, before the joint rates are divided on the basis of the prorating distances specified, a terminal allowance of 1 cent per 100 pounds.

One of the exhibits submitted by the Boston & Maine shows rates and divisions between Johnsonville, Keene, Fitchburg, Boston, Concord, Portland, and St. Johnsbury, and New York via Troy, N. Y., and the New York Central. Special consideration is asked of the divisions between Boston and New York. The total distance via Troy is 336 miles; the short-line distance via the New Haven direct, using Jersey City as typical, is 218 miles. The haul of the Boston & Maine to Troy is 190 miles; the prorating distance exceeds this by 1 mile. The first-class rate from Boston to New York is 74 cents per 100 pounds, either by the New Haven direct or via the Boston & Maine and Troy. The Anderson scale for 190 miles is, first class, 82.5 cents per 100 pounds. The actual distance from Troy to St. John's Park station, New York, is 150 miles, 2 miles less than the prorating distance. The Anderson scale is not in effect between Boston and Troy. After deducting a terminal allowance of 2 cents per 100 pounds accruing to the New York Central for the use of its rail terminals in New York, the proportion of the Boston & Maine of the existing class rate from Boston to Troy is 56.34 per cent. The local rate west of the junction, first class, is 55.5 cents per 100 pounds, which is materially lower than the Anderson scale for a similar distance. Even taking this extreme instance on traffic which could be handled direct from Boston to New York via lines of and leased by the New York Central, the Boston & Maine receives only 1 cent per 100 pounds less from a competitive rate than a strict mileage prorate would afford it.

#### DIVISIONS VIA MAYBROOK.

Maybrook and Campbell Hall, 25 miles southwest of the Poughkeepsie bridge, are practically one interchange for the Erie, Lehigh & Hudson, Lehigh & New England, and the New York, Ontario & Western, which connect at one or the other of these junctions, via the Central New England, with the New Haven. The Delaware, Lackawanna & Western and the Central of New Jersey have direct connection with the Lehigh & Hudson. Prior to various dates from 1901 to 1908 all of the principal trunk lines now using the Maybrook gateway had divisional arrangements via Harlem River, which were

transferred to Maybrook. The divisions between the Erie and the New Haven were established in 1896 on the basis of those applicable in connection with the Pennsylvania. Later the interchange was moved to Newburgh, N. Y., without change in the divisions. Under this arrangement the New Haven had, except when the river was frozen over, a ferry service across the Hudson River of 1 mile, in lieu of the 13 miles across New York harbor, for which it received 40 miles on short-haul and 60 miles on long-haul traffic. The removal of the interchange from Newburgh to Maybrook shortened the haul of the Erie 18 miles (although the line of the Pennsylvania to Chicago, Pittsburgh, and Cleveland is shorter than that of the Erie), whereas the actual mileage of the New Haven-Central New England was thereby increased 25 miles. The shifting of the interchange with the Delaware, Lackawanna & Western to Maybrook necessitated the use of an intermediate carrier, the Lehigh & Hudson, for 58 miles, and increased the through haul of the New Haven-Central New England 11 miles. In 1908, when the interchange of traffic from points on the Philadelphia & Reading and Baltimore & Ohio railroads via the Central of New Jersey was changed from Harlem River to Maybrook, these three carriers filed a complaint with us, No. 1400, *C. R. R. of N. J. v. N. Y., N. H. & H. R. R. Co.*, alleging that the cancellation of rates, interruption of routes, and other facilities from points on the New Haven to points on the lines of complainants on the New York harbor interchange would subject complainants and their traffic to undue prejudice and disadvantage, but upon stipulation between the parties it was dismissed. The divisions of the New England lines were retained and their hauls were somewhat increased; the three carriers named divided their revenues with the Lehigh & Hudson, and the Central of New Jersey had its haul on traffic from points on the Baltimore & Ohio and Philadelphia & Reading reduced from 89 miles to 16 miles, the distance from Allentown to Easton, Pa., and lost 73 miles of its haul on that traffic as well as on its own. The Lehigh & Hudson is controlled jointly by the Pennsylvania, Baltimore & Ohio, New York Central, Erie, and Central of New Jersey.

#### SOUTHERN DIVISIONS.

We have shown that rates on traffic between New England and southern territory are divided on the basis of specifics. It is stated for complainants that these divisions, which have not been increased 40 per cent following Ex Parte 74, should be revised in harmony therewith. It is asserted that it is unreasonable to require the carriers in the eastern group to accept an increase of only 33½ per cent in their divisions on interterritorial traffic, and that the south-

ern lines should not demand 33½ per cent increase on this traffic in a territory in which an increase of only 25 per cent was authorized. The matter is now the subject of negotiations between the carriers, and this record does not afford a basis upon which to determine that issue.

#### TRANSCONTINENTAL DIVISIONS.

Commodity rates and divisions are shown to Boston and Manchester, N. H., via the lines of western carriers to Chicago, Ill., thence via the New York Central to Rotterdam Junction and thence via the Boston & Maine from points on the Pacific coast, and from the named New England points, and from Union Market, Gardner, and Lowell, Mass., to the Pacific coast points. The list of commodities includes apples, wool in the grease, and canned salmon from Seattle, Wash.; apples and lumber from Spokane, Wash.; canned fruits and hides, green, from San Francisco; and lemons and oranges from Los Angeles; and, principally, automobile tires, boots and shoes, cotton goods, dry goods, oil stoves, and patent medicines from the New England points to the Pacific coast terminals.

In all instances, save on apples from Seattle to Boston, cotton piece goods, carloads, from Manchester to Los Angeles, patent medicines, less than carloads, from Lowell to Los Angeles, and rubber boots and shoes from Union Market to Los Angeles and Seattle, the New York Central receives less than it would receive upon a mileage prorate. Save in respect of these exceptions and on patent medicines, carloads, from Lowell to Los Angeles, the lines west of Chicago receive on all of the commodities more than they would receive from a mileage prorate.

The eastbound rates divide: east of Chicago, 25 per cent; west of Chicago, 75 per cent. The westbound rates divide: east of Chicago, 27.5 per cent; west of Chicago, 72.5 per cent. The east of Chicago proportion of the joint rates divides: to and from Boston, New York Central, 79.4 per cent; Boston & Maine, 20.6 per cent; to and from interior New England points, New York Central, 73.4 per cent; Boston & Maine, 26.6 per cent. In some instances—as, for example, from Los Angeles to Boston and Manchester—on lemons the proportion of the New York Central is further subdivided between the lines east and the lines west of Buffalo: To Boston, lines west, 52.4 per cent, lines east, 27 per cent; to Manchester, lines west, 48.5 per cent, lines east, 24.9 per cent. This is the only instance in the whole record in which the subdivisions of the rates as between the carriers participating therein are shown. In all other instances the divisions have been shown only from and to the New England gate-

ways. The Boston & Maine receives on transcontinental traffic its terminal deduction of 1 cent per 100 pounds to interior New England points.

In numerous instances the percentages of the joint rates accruing to the lines east of Chicago are subject to the full class rates as maxima.

The following examples illustrate the extremes in these rates: The rate on dry goods, n. o. s., including woollens and flannels, less than carloads, from Boston to Los Angeles is \$6.255 per 100 pounds; the Boston & Maine and the New York Central each receives its full local, first class, \$1.575; the Atchison, Topeka & Santa Fe Railway, the remainder, \$4.68. On this traffic the Boston & Maine and the New York Central each receives less than a mileage prorate and the Santa Fe more than a mileage prorate. On cotton piece goods, calicoes, sheetings, and gingham, from Manchester to Los Angeles, a distance of 1 mile less than from Boston to Los Angeles, the Boston & Maine receives, from a rate of \$2.085 per 100 pounds, 19.38 cents and the New York Central 32.8 cents in excess of a mileage prorate, whereas the Santa Fe receives 52.2 cents less than a mileage prorate.

Complainants strongly emphasize the fact that the inadequacy of the eastern roads' divisions on transcontinental traffic is admitted by some of the trunk lines. Such an "admission" is of no probative force against the transcontinental roads, none of which was represented at the hearing.

#### CONCLUSIONS.

In *Proposed Increases in New England, supra*, the local situation in New England was portrayed in considerable detail. Therefore, while we have considered the evidence now before us with respect to local conditions, we have endeavored to refrain so far as reasonably possible from a further exhaustive presentation of details and to confine our discussion to the directly pertinent facts prerequisite to a determination of the issues.

We think that there is merit in the allegations of defendants that the proceeding is, in substance, an effort on the part of complainants to augment their revenues from traffic which they interchange with their connections without regard to the question of whether the present divisions of the various joint rates are fair and reasonable or consideration of the probable effects upon the revenues of the respective defendants. The proceeding is essentially an outgrowth of Ex Parte 74. It is contended for complainants that our decision in that proceeding operated to the relative disadvantage of the New England lines because their inclusion in the eastern group gave them less additional revenue and defendants more than  
21. C. C.

might otherwise have been received and because of the difference in the percentage increases authorized for freight and passenger traffic, respectively, the lower percentage of increase having been authorized for passenger traffic, which is, generally speaking, relatively greater on complainants' lines than on the lines of defendants.

At the close of complainants' case defendants moved to dismiss the prayer for relief under paragraph VIII on the ground that we are without power to grant such relief. They moved also to dismiss other portions of the complaint, alleging that complainants had failed to make out a *prima facie* case and had not offered proof that would entitle them to the relief prayed. We shall, however, deal with the issues upon the record made.

In no proceeding heretofore brought under the provisions of the interstate commerce act have we been called upon to exercise powers so broad as those upon which complainants here rely. We may, therefore, fittingly advert to the controlling principles of law, illumined in the event of possible doubt by cardinal rules of statutory construction.

Under the substantive provision of section 1, paragraph (4), of the interstate commerce act, there rests upon every common carrier subject to the act the duty, in the case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers. A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to our finding or order. *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, 61 I. C. C., 272. It follows as a necessary corollary that we must be guided by the intent of Congress as expressed in the provisions of the present statute. It is fundamental that we can act only under the jurisdiction conferred upon us by Congress. We may exercise only such powers as we now have subject to any limitations which now attach to them.

Under the provisions of paragraph (6), section 15, of the act we are authorized in appropriate cases, after full hearing, to prescribe by order the just, reasonable, and equitable divisions of joint rates, fares, or charges to be received by the several carriers. Our jurisdiction attaches irrespective of the manner in which divisions theretofore prevailing were established. And our duty to prescribe divisions arises when, after full hearing, we are of opinion that the divisions brought in issue "are or will be unjust, unreasonable,

inequitable, or unduly preferential or prejudicial as between the carriers parties thereto." In so prescribing and determining divisions of joint rates we are required to give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and "any other fact or circumstance which would ordinarily without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge." Under the provisions of the section no one of the elements which we are required to consider is predominant; all are to be considered *per se* and relatively in the determination of just, reasonable, and equitable divisions "to be received by the several carriers." The words "without regard to the mileage haul" do not forbid consideration of the element of distance. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance in which event we may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that we should consider all the facts and circumstances. We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for the service it performs in the joint haul under joint rates, fares, and charges. Our determination must be predicated upon a consideration of all the various pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive.

By evidence of costs reflected largely in units of miles, ton-miles, locomotive-miles, and switching-miles, complainants endeavor to show that the cost of transportation over their lines is relatively greater than that incurred by defendants. The voluminous record upon which the case is submitted is replete with evidence of peculiar local conditions in New England and the consequent relatively higher cost of conducting services for which complainants allege they are not justly, reasonably, and equitably compensated, with the result that their financial needs are not met.



It may well be that complainants are operated as efficiently as are other carriers; the importance of their service to the public in the highly developed territory which they serve can not easily be exaggerated; but their financial condition is not measurably worse than that of some of the defendants. The public interest does not demand nor does the statute either expressly or by reasonable implication provide that we may prescribe increased divisions of joint rates, fares, and charges to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. Nor are we vested with discretion by virtue of which the mandate of section 1, paragraph (4), that divisions of joint rates, fares, and charges as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable might be made ineffective by administrative or judicial action. The remedial provisions of paragraph (6), section 15, of the act offer to the carrier a source of relief to which it may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or in the event of a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable."

In the view of complainants, we have "ample power to readjust these divisions by adding to the divisions of the New England lines without in this proceeding attempting to readjust the divisions between lines west of the gateways." It is submitted for complainants that "the New England lines are entitled to divisions 33½ per cent in excess of what they now receive" notwithstanding admissions that divisions of certain joint rates now received by complainants are reasonable and equitable and that the present blocking of divisions in New England is a "mess of inconsistencies" and must be almost entirely rebuilt. No evidence of the reasonable and equitable measure of divisions other than "as a whole" has been offered. No method by which the apparently incongruous plan of divisions now in force might be readjusted has been submitted and we are thus left to deal with the situation in the light of generalizations which can lead only to speculative ventures upon an unknown field. The various methods which have been suggested to alleviate the financial condition of the New England lines and to insure to them just, reasonable, and equitable divisions indicate in themselves the uncertainty of their application and it is apparent that if adopted they would not only perpetuate the inconsistencies to which complainants refer but would create new preferences and prejudices.

For defendants it is contended that the failure of complainants to submit any evidence of the divisions on coal traffic, irrespective of those on other commodities which have been heretofore enumerated, is fatal to complainants' request for blanket relief since we can not know whether the divisions on coal and the other traffic are more or less than those to which the complainants are entitled and if it might be assumed that the divisions on the merchandise traffic are "as a whole" unjust and unreasonable, we have no evidence upon which to base an opinion as to whether the deficiency is or is not met from the revenues on coal.

To treat the complainants "as a whole" or as a group would disregard the differences which obtain between the complainants individually. Much of the evidence adduced was solely in behalf of the New Haven and manifestly has no application to conditions on the Bangor & Aroostook, the Central Vermont, or the Rutland. The conditions obtaining on the lines of complainants are so essentially dissimilar that general relief would not afford each of them reasonable and equitable divisions.

The terminal characteristics of the New England lines have long been recognized, and complainants show that constructive mileage and arbitraries have been allowed them in partial recognition of their terminal character. A witness for complainants testified that during the last 15 years there has been no substantial change in the characteristics of the New England roads, and, as has been seen, we permitted material increases in the class rates in New England which reflected the terminal characteristics of their roads. To what extent the constructive mileage and arbitraries recognize in the joint rates the terminal characteristics of the New England lines is not capable of accurate ascertainment from this record; whether or not they are reflected in such rates is doubtful, since for many years, for example, transcontinental rates have been blanketed over wide areas, and, despite the additional haul to New York, west-bound rates from Boston and points north thereof are on the same basis as those from New York. Eastbound, the rates to Boston and numerous points grouped therewith are differentially from 7 to 2 cents per 100 pounds, first and sixth classes, higher than to New York. None can question but that these rate adjustments, among others, are to the interest of New England. Whether they are reasonable or unreasonable is not in issue in this proceeding. Our power is limited to dividing the available rates; otherwise the additional costs of a particular carrier not reflected in the rate might leave no division for another carrier.

The age of the divisions affords no presumption that they are unreasonable; it may be that they were too liberal originally. The

record fails to show clearly that relatively the New England lines have had exceptional handicaps which their competitors have not encountered. We are told that it cost the New England lines \$17,646,168 a year to have per diem substituted for mileage as the basis for car hire, but no complementary statement is offered with which this amount can be compared. It is shown that New England is remote from the coal fields and that the New England roads must pay for the transportation of coal and other materials and supplies more than their connections pay, but there is nothing in the record to indicate that relatively these costs have increased to a greater extent than have similar costs in other territories. The relatively high proportion of passenger traffic on the principal New England roads has been especially stressed, but how that high proportion should be translated into increased divisions of freight rates for the complainants is only vaguely and indefinitely indicated. The effect of the cost of labor in New England has been stated in gross amounts, and the alleged exceptional effect of such costs has been expressed in percentages for certain roads, but it may be that defendant roads operating in sparsely settled communities were also adversely affected by wage increases.

Terminal service does present one of the greatest operating problems which now confront the railroads of the country. Greater economies have been made in train operation than in terminal service. Terminal services should be more efficiently performed, and it may be that their costs are not adequately reflected in the rates, but nothing positive or definite is presented on this point.

If it had been clearly and definitely shown that particular divisions assailed were but fair compensation for the service performed when they were established and that since the establishment complainants have been subjected to relatively exceptional operating expenses of permanent character, some basis for an adjustment by us of the divisions of joint rates as between the several carriers participating therein would have been indicated if those exceptional expenses were reflected in the rates. Mounting operating costs, with which revenues have not kept pace, have been general. The voluminous, but yet limited, character of the divisions submitted; the selection of the points between which the divisions apply; the dividing of the rates only at the gateways; the almost total lack of the reasons which impelled the making of divisions via one gateway lower than via another; the doubt cast upon the reasonableness of the allowances and the arbitraries; the varying amounts of constructive mileage received by the complainants; the extent of the groups; the inconsistency of the division blocking; the failure of the Bangor & Aroostook to show any of its divisions; the fact that the Maine Central

receives terminal arbitraries and arbitrary proportionals on much of its traffic; the failure to submit divisions on coal, high explosives, fluid milk and its edible products, fresh meat, in carloads, and other commodities; the absence of concrete final cost figures and indispensable facts, and, generally, the submission of much unrelated data, have resulted in a record that affords no basis upon which we might predicate a valid prescription of divisions. We are authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite. Any attempt to prescribe a blanket increase of divisions as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable to complainants would override the plain mandate of law.

While we are urged to adjust the divisions "as a whole" on the presumption that the facts shown of record as to a part of the complainants are generally true as to all of them, and that they reflect the situation in New England, it is to be noted that some of the roads in New England have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to authorize us to do. The statutory provision for recapture of excess earnings from individual carriers also clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management.

However, the record lays before us an existing condition of divisional arrangements which is the antithesis of equality, uniformity, system, or order. A plan of transportation practices so fraught with incongruities and from which, as indicated by one of counsel, anything might be proved by a judicious selection of items, is indefensible. While the record affords no foundation upon which might rest a valid prescription by us of divisions, we can not disregard the conditions portrayed. Our duty would not be fully performed if we did not require a readjustment under which the conditions shall be relieved and demonstrably fair treatment accorded to all parties with respect to individual divisions. We are convinced, upon consideration of all the facts, that just, fair, and equitable divisions can not in many instances flow from the chaotic divisional arrangements to which we have adverted. We

shall expect defendants and complainants to promptly submit to us proposed readjustments that will remove the inconsistencies portrayed of record and bring into conformity with the principles of law and equity expressed in the act the divisional arrangements, individually and as a whole, between complainants and defendants. To this end designation by the parties of appropriate committees of qualified personnel is recommended, and we shall expect the appointment of such committees to work jointly in revision of the divisions and to report to us at the end of 90 days after the date hereof the results of their efforts, together with statements of divisions upon which agreement has been reached, as well as those upon which there may not be complete agreement. Such statements may be accompanied by statements of fact and argument upon which the respective committees rely. Thereafter reports should be made to us at the end of each period of 60 days until final and complete disposition of the issues shall have been accomplished. For these purposes the record will be held open.

*EASTMAN, Commissioner, dissenting:*

Throughout the majority report runs the criticism that complainants ask revision of their divisions "as a whole." The thought is that the law requires us to attack the problem atom by atom, withholding action until we have the necessary evidence to analyze separately the many thousands of joint rates and determine finally their just and equitable divisions. I am unable to accept this view of our power and duty. If the New England carriers were to obtain relief in this proceeding which would be of avail against impending financial danger, it was necessary for them to move quickly and deal broadly with the situation. They merit no criticism for so doing, and in my opinion they have made out a case justifying temporary relief pending more detailed consideration of specific divisions.

The transportation act, 1920, was the product of months of hearings and intensive study. It was, I believe, the intent of Congress to provide for the transportation needs of the country and to confer upon us all necessary power to that end. We are an administrative as well as a judicial body, and the success of the present railroad policy depends largely upon our ability to use the power so conferred promptly and effectively when occasion demands. In this case I fear that the majority are construing certain vital provisions of the act in a way that will make it a less effective instrument than it was designed to be for the promotion of the general transportation good.

The critical financial condition of the New England roads, in which the United States has an investment of some \$125,000,000, is a matter of common knowledge. For some months they have

been failing to earn fixed charges. It is at least possible that only some measure of success in this proceeding will save certain of these carriers from serious financial trouble. If the danger is not averted results will follow of direct and serious concern to the whole country. Not only will it be deemed proof of the failure and futility of the transportation act, 1920, but for years it will discourage investment in railroad securities in a part of the country which has been one of the great markets for such securities.

These results will be the more certain and severe because the financial trouble will be due to failure to earn upon legitimate investment. New England railroads have a reputation for financial mismanagement which is only in part well founded. The New Haven was the chief victim of this mismanagement, and it consisted in the waste of many millions of dollars in the purchase of securities of trolley, steamship, and other companies. But the investment of the New Haven in physical railroad property is sound, and if it earns a return on that investment it can at least pay its way. Its present difficulty is in earning even operating costs.

Although the larger New England lines operate in thickly settled country, where millions have been spent on second, third, and fourth tracks, the abolition of grade crossings, costly station and terminal facilities, and electrification, their railroad property investment per mile of road is relatively low. The average in 1919 was \$106,888 as compared with \$148,631 for other carriers in the eastern group. The figures for the three principal New England lines were, respectively:

New Haven.....	\$188, 857
Boston & Maine.....	96, 240
Maine Central.....	54, 191

Contrast with these the following:

Bessemer & Lake Erie.....	\$254, 301
Delaware & Hudson.....	245, 640
Central of New Jersey.....	240, 172
Delaware, Lackawanna & Western.....	235, 154
Erie.....	216, 043
Western Maryland.....	205, 418
Virginian.....	198, 701
Ontario & Western.....	195, 714
Pennsylvania.....	198, 064

Preliminary information from our bureau of valuation, of record in this proceeding, indicates value for the New England roads in excess of property investment. No corresponding evidence was offered in behalf of defendants. The majority fail to note this fact, and throughout their report rate the property investment of

the other carriers in the eastern group on equal terms with the property investment of the New England roads, as if it were known to be as sound and valid.

Our power to deal with the critical situation which the case presents depends upon the provisions of paragraph (6) of section 15 of the interstate commerce act, which define our duty with respect to divisions. Certain matters apart from *mileage* haul are specified which we must consider in fixing divisions. Out of the four so specified, two are as follows:

The amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation.

The importance to the public of the transportation services of such carrier.

If the fair measure of divisions were merely the amount and cost of the service rendered by the respective carriers, it is clear that neither of these matters would be relevant or material. Our problem would be to take a given joint rate, compare what each participating carrier contributes in the way of service and cost, and divide the rate accordingly. The fact that one carrier might be rich and another poor would have not the slightest bearing upon the ascertainment, nor would the importance to the public of the transportation service of any carrier. It follows that we can attach no weight to these matters which have been given so much prominence in the law unless we are prepared to accept the conclusion that in some cases it may be just and equitable and in the public interest to divide joint rates in disproportion to the amount and cost of the service rendered.

It is, I think, an inevitable conclusion that Congress intended to give us a wider jurisdiction and discretion in determining divisions than would have been proper if such determination were viewed merely as an isolated problem. In other words, divisions were regarded in connection with and as a phase of the larger problem of assuring a national transportation system sound and healthy in all its parts, and it was the definite intent to permit us, in fixing divisions, to take into consideration this larger end. I can conceive of no other reason for the language quoted above and particularly for the prominence which has been given it.

Stating the purpose in another way: In the hearings which preceded the transportation act, 1920, attention was continually directed to the problem of the weaker roads. It was realized that the rule of rate making in section 15a would produce uneven results and leave this problem unsolved. While Congress was unwilling to go so far as to authorize the direct diversion of the excess earnings of the strong roads for the benefit of the weak, it did deem it wise and

expedient to permit, and indeed require, the relative prosperity of carriers to be taken into consideration in determining the divisions of joint rates. Nor was this a means of doing indirectly what Congress was unwilling to do directly. It was, rather, a means of going part way along the path suggested without traveling the full distance.

I find no difficulty, therefore, in reaching the conclusion that in this case we have both the right and the duty to consider, not only the relative importance and cost of the service rendered by the respective carriers, but also the *financial needs* of the New England roads and the consequences to the entire country if they should meet with serious financial trouble.

A second vital question of law is whether we have authority to make a temporary adjustment of divisions pending a further and more detailed consideration of the problem which they present, consuming many months of time. I take it that the majority believe that we have no such authority, but here also I feel that their view of the law is unduly narrow. As already indicated, we combine judicial and administrative functions and are really custodians of the national transportation interests. It is good administration to act quickly when the public interest demands, upon the best evidence available, even if we know that readjustments may be necessary before the problem under consideration is finally put to rest.

This is precisely what we have done in the administration of our powers over rates. In the summer of 1920 we heard group after group of shippers complain that they would suffer hardship and unreasonable rates if a general percentage increase were permitted. Our conclusion in *Increased Rates, 1920*, 58 I. C. C., 220, 243, was this:

It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates which can best bear the burden of increases, and the relationships of the rates and differentials which will be disturbed by a percentage increase. *This is precluded by the necessity of prompt action upon the main issues presented.* [Italics mine.]

In other words, we authorized rates which we could only find "not unreasonable in the aggregate" (page 246) and which we knew might, and probably would, be harsh and unreasonable in specific instances unless subsequent readjustments were made. But we did not hesitate to do this, because the emergency called for "prompt action," even though it might be temporary, and as good administrators we did the best immediate thing that could be done in the public interest.

I know of no reason why a similar policy should not be followed in the case of divisions. Surely we are not called upon to withhold general remedial action for fear of possible injustice to carriers in



specific cases, when we do not withhold such action for fear of possible injustice to individual shippers. It is true that our duty under the law is to establish "just, reasonable, and equitable divisions," but it is likewise true that our prompt but confessedly imperfect action in Ex Parte 74 was founded upon the provisions of paragraph (2) of section 15a, which begins with the words: "In the exercise of its power to prescribe *just and reasonable* rates, the Commission shall, etc."

I think it a logical conclusion, therefore, that we are not without power to prescribe a temporary adjustment of divisions where we know that further inquiry may be necessary before stability and permanence can be attained, if good administration of the national transportation interests calls for "prompt action" and the best measure of relief that can presently be afforded. It should here be noted that while interchange traffic with defendants is a very large factor in the revenue of complainants, the interchange traffic of any one of the defendants with complainants is but a minor factor in its revenue.

I come now to the consideration of what action, temporary or permanent, in the critical situation by which we are faced is justified by the law and the record.

Before attempting to answer this question it may be well to clarify certain aspects of the evidence as set forth in the report of the majority. Complainants filed exhibits showing the divisions, as between New England roads and the lines west of the Hudson, of several thousand joint rates applying between every division block in New England and representative points of traffic importance in every part of the eastern group. The traffic expert for the Pennsylvania testified that the selection was illustrative and fair. Further elaboration would only have encumbered the record with cumulative evidence. Any conclusion that the complaint should be dismissed because of inadequacy in this presentation is clearly unwarranted.

The majority make much of the apparent inconsistency of many of these divisions. It is true that the division blocks often seem irregular and illogical and that they are the outgrowth of by-gone conditions; but much of the apparent inconsistency in the divisions is due to the fact that they are constructed upon the blanket principle. We have had occasion frequently to observe that where rates are based upon this principle inconsistencies are bound to develop, particularly at border points, and that sound conclusions can only be reached by considering average rather than individual rates. This is just as true of divisions which are based upon the blanket principle.

Complainants compare the percentages which their divisions bear to the local "Anderson scale" rates between the same points with the percentages which the divisions of defendants bear to the corresponding local rates west of the Hudson. In a majority of instances the New England percentages are smaller. In a number of cases, also, their divisions are less than would be received under a strict mileage prorate, and in many more the excess is slight.

Defendants likewise test the divisions by showing:

1. That for the most part they give the New England roads more than would be received under a mileage prorate.

2. That frequently they are larger than the divisions which would result from a 50-mile block plan, allowing an extra block of 50 miles to both the originating and the terminal carrier.

3. That on typical traffic the New England divisions are based on constructive mileage substantially in excess of actual mileage.

In considering these tests, it must be borne in mind that because of short haul and terminal expense the New England carriers would be entitled upon any theory to better than a mileage prorate, even if they were in other respects as favorably circumstanced as the carriers west of the Hudson. The 50-mile block plan, also, is designed merely to afford some additional compensation to the originating and terminal carriers and would be appropriate for application between carriers operating in the same territory. It makes no allowance whatever for operating disadvantages of the New England carriers apart from terminal service. It further appears that in their comparisons between actual and constructive mileage defendants fail to give weight to the fact that a part of the difference is accounted for, in the case of traffic interchanged through the Harlem River gateway, by the allowance of 40 miles on short-haul traffic and 60 miles on long haul for the float service in New York harbor. All the floatage between its terminal and the Jersey shore, a distance of 14 miles, is performed by the New Haven, and the cost of moving these floats through the congested waters of the Hudson and East rivers is very great. Constructive mileage for the defendants also exceeds actual mileage in many cases, and it is apparent that if this excess were relatively equal to the New England excess, the result would be the equivalent of a mileage prorate. As a rule, the New England excess is relatively greater; but it appears that in the southern peninsula of Michigan, where conditions are said, I think quite erroneously, to resemble those in New England, the constructive mileage is nearly 100 per cent in excess of actual.

In the report of the majority considerable attention is given to the seemingly large divisions received by the New Haven on traffic interchanged with the Boston & Albany division of the New York

Central. The fact is that the New Haven can interchange traffic with the main line of the New York Central and secure a much longer haul. When it consented to short haul itself by participating in joint rates with the Boston & Albany on traffic to or from the more distant New York Central destinations, it insisted upon the same divisions as it would have received via the other routes. In this interchange with the Boston & Albany the New Haven has short, unconcentrated hauls combined with terminal expense, and the Albany receives and bridges the traffic on its main line. Reference is also made to the transfer of certain traffic from the Harlem River to the Maybrook gateway, the New England divisions remaining the same. This transfer, however, as a rule lengthened the New Haven haul and shortened the haul of the carriers west of the Hudson, and for the floats in New York harbor there was substituted the costly Poughkeepsie bridge, owned and controlled by the New Haven through the Central New England.

Summing up this evidence as to existing divisions, it can only be regarded as unfavorable to the New England carriers if attention is concentrated upon *mileage haul* and if the other facts and circumstances "without regard to the mileage haul," which the act requires us to consider, are not given the weight to which they are fairly entitled.

Coming, then, to the crux of the problem, I believe that it has been shown that the New England carriers are justly entitled to some measure of immediate relief, pending further and more detailed inquiry, and that it may lawfully be granted upon either one of two independent and distinct grounds.

Without going further, I believe we are justified in granting such relief in reliance upon those provisions of the act which require us to take into consideration *financial needs* and the importance to the public of the transportation service rendered. At the present time many carriers are in poor financial condition, but it will, I think, be conceded that there are no important carriers *whose property investment account is known to be conservative* that are so near the brink of serious financial trouble as the New England roads. It was to give us power to ameliorate and remove the threat of precisely such situations, without disrupting business conditions by experiments with special rate increases, that the provisions above mentioned were made a part of the law. Upon any other theory they become mere language without meaning.

But without regard to financial needs, there is evidence justifying temporary relief for the New England roads. I have in mind the evidence which proves beyond question that the burdens of the New England carriers have grown out of proportion to the burdens

of the lines west of the Hudson. Relatively, the situation has recently changed to the great disadvantage of the New England lines.

The majority find that existing divisions are greatly in need of revision and urge that the task be undertaken at once. But for many years and until the radical change in conditions brought about by the world war, these divisions stood unchallenged, and it is a fair presumption that upon the whole they produced equitable results. If, then, the New England carriers have shown that the recent change in conditions has been far more burdensome to them than to defendants, it is but just that some temporary adjustment be made to compensate for this distortion pending the establishment, after what are likely to prove months of negotiation, of divisions upon a more scientific basis.

The majority have, I fear, wholly failed to grasp the importance and significance of the evidence showing the effect which the recent heavy increases in rates and wages have had upon the New England lines. This failure is made clear by the fact that they apparently regard as unfavorable to complainants' contentions the comment of one of their witnesses that "during the past 15 years there has been no substantial change in the characteristics of the New England roads," although it is these very unchanged characteristics that have made the increases in wages and rates so burdensome.

The record shows clearly that by reason of these increases, occurring within the past three years, the burdens of the New England carriers have grown at a disproportionate rate in at least the following respects:

1. *Cost of fuel and supplies.*—Certain carriers west of the Hudson in the eastern group have no mines upon their own rails, but there are not many such and all are much nearer the mines than are the New England carriers. Carriers with mines on their own rails can secure better contract prices; but this is a lesser matter. The vital difference between the New England roads and the other carriers, where the expense of fuel is concerned, is the cost of transportation. It is inevitable that when freight rates are increased the carriers nearest their fuel source will suffer less; and this is precisely what has happened in New England. The fact stands uncontradicted upon the record, and the carriers west of the Hudson, the New York Central and Erie, the Pennsylvania, the Great Lakes and many other supplies.

2. *Standardization of rates.*—The New England roads claim that they have suffered a disproportionate increase in wages upon the ground that they have paid relatively less than the carriers west of the Hudson. This is called standardization. The evidence indicates that the Bangor & Aroostook, Central Vermont, Rutland, and the New Haven, but probably not, in general, of the New Haven

and the Boston & Maine. A far more important consideration, wholly neglected by the majority, is that it requires substantially more labor in New England to produce a given number of ton-miles of freight transportation than in other sections of the eastern group; and there is no evidence which warrants a conclusion that this is due to inefficiency. It comes about from the slowness of transportation incident to terminal service and the splitting of the traffic at frequent junction points, and from the fact that the pick-up and delivery character of the service and the diffusion of traffic over many secondary and branch lines make it necessary to handle the freight by a large number of short trains rather than by a small number of long trains. The following statistics are of great significance. They show percentages for the New England lines as compared with the trunk line and central territory roads.

Car-miles per car day.....	73.5 per cent.
Net ton-miles per car day.....	60.8 per cent.
Net ton-miles per train-mile.....	57.4 per cent.
Net ton-miles per locomotive day.....	55.9 per cent.
Cost of yard expenses per 1,000 net ton-miles.....	155.5 per cent.
Freight train costs per 1,000 net ton-miles (wages).....	184.1 per cent.
Freight train costs per 1,000 net ton-miles (total).....	176.7 per cent.

There are other figures of like import. A simple illustration of the principle involved is this: If one factory can turn out 100 articles per day with the labor of two men and another factory is so equipped that six men are required to produce the same number, an increase of wages will cause a disproportionate increase in the operating costs of the second factory, other things being equal. This is precisely what has happened in the case of the New England carriers, as compared with the lines west of the Hudson. The record so shows.

3. *Per diem expenses.*—At the time when the great bulk of the present divisions were established, car hire was on the mileage basis. Complainants show that if the mileage basis had been maintained and had been increased at the same rate that the per diem has increased, the car-hire cost to the New England lines in 1919 would have been \$16,567,350. On the per diem basis it was \$34,213,518, a difference of \$17,646,168. For present purposes it is immaterial whether or not per diem or mileage is the proper basis. The undisputed and important fact is that mileage was far more favorable to the New England lines than per diem, and that the substitution of the latter has imposed a burden which did not exist when the divisions were established.

Defendants suggest that the New England roads could avoid the payment of per diem by the acquisition of more cars. While I think this irrelevant, since in any event it would merely change the form and not the substance of the burden, the claim is challenged not

only by complainants but also by certain defendants, such as the Pere Marquette, who are similarly situated with respect to per diem payments.

In the foregoing discussion I have not spoken of the contention that the inclusion of the New England lines in the eastern group made the rate increase for the carriers west of the Hudson in Ex Parte 74, \$25,000,000 more than it otherwise would have been, yet this is a matter which ought not to be disregarded. Whatever the precise amount, the fact remains that the inclusion of the New England roads improved the situation for the other carriers, and we may properly take this into consideration.

My conclusion is that we may and should require a temporary adjustment of the divisions in favor of the New England lines, keep the case open, and direct the parties to reopen negotiations and be prepared to renew the trial of the case at or before the expiration of one year if they are unable to agree among themselves as to a permanent adjustment in the meantime. As I have tried to show, the record will support such temporary relief either upon the theory of financial needs or upon the theory of changed conditions, or upon a combination of the two. The evidence is insufficient to measure the effect of the changed conditions accurately in dollars and cents, but it is not insufficient for a conservative estimate, and partial reliance upon financial needs makes even this unnecessary.

Stated concretely, my judgment is that the least we should do is to require the carriers west of the Hudson for a period of 18 months, unless otherwise ordered, to shrink their divisions by 15 per cent on all interchange traffic, except coal, with complainants, this amount to be added to the divisions of the New England lines. Coal must be excepted for the present, because no evidence has been introduced in regard to the divisions on this traffic, and complainants have themselves asked that we allow the case to remain open for the submission of further evidence on this point.

The plan thus suggested would probably help certain New England carriers more than others, but they would have it within their power to correct such result by adjustment of their own interline divisions, and we could with propriety suggest that this be done.

POTTER, *Commissioner*, dissenting:

I can not concur in the majority report, which seems to me needlessly to concede the futility of the transportation act and the impotence of the Commission to remove injustice. I concur generally in the views expressed by COMMISSIONER EASTMAN, but desire to amplify the reasons, as I see them, for adopting his conclusions.

The transportation act has settled the carriers upon the high plane of public service. The aspect of private business enterprises, entitled to all they can win from their position and strength, limited only by what the traffic will bear, is no longer dominant. Subject only to supreme decree on constitutional questions their revenues are to be limited to fair compensation for the services which they render. The Congress has expressly applied to them the rule which, in the present day, must be recognized with increasing application to all industries—that enterprises are justified primarily, not for individual gain, but because the public needs them and those who thus serve the public are entitled to receive as profits fair compensation for the service which they render. The United States Chamber of Commerce recently recognized the passing to this era when, speaking for the industry and commerce of the nation, by deliberate resolution said “The foundation of all enterprise is primarily that of service to the community.”

As public servants carriers are to have public protection and fair compensation. Having regard to the essential function which they perform, the railways which are honestly, economically, and efficiently managed are entitled to a status and relation to industry and to each other which assures them prosperity. To these ends the transportation act was framed. We have been given the power to work out the detail of rate adjustment to yield the compensation which the Congress has determined shall be provided. We are authorized to act in helpful ways in matters of operation. We are charged with the duty of enforcing correct adjustments between carriers in their joint relation and of requiring the application of the rule of right instead of power. We must see that through rates are fairly divided, and we must find a way to bring this about. We are not a court to dismiss for want of proof. We must ascertain the facts, and we have all necessary means. We must correct injustice when and where we find it and as we can. With one accord we have condemned the existing adjustment. We should now correct it. COMMISSIONER EASTMAN has pointed a way, and we should follow it.

The effect of including the New England lines in ascertaining the values of the railways in the group and the earnings needed, to make up the deficit below a fair return, as a basis for determining the amount and percentage of rate advance was to increase the percentage which was accorded to the other lines beyond what it would have been if only the values of their own lines had been considered. The other lines are enjoying not merely the increases that their own values entitled them to, but something additional resulting from the value and deficit of the New England lines. Large sums which the public

pays, in rates and charges, because of the value and deficit of the New England lines are going, not to them, but to the other lines in the group. The effect of this is to give to the other lines more than they are entitled to under the theory of the transportation act and to give to the New England lines correspondingly less than they should have. This wrongful diversion of earnings is represented by an ascertainable percentage of all earnings on through business, which are being withheld from the New England lines as a whole and given to the other lines in the group as a whole. This percentage should be taken away from the other lines and given to those in New England, and this can be done by a percentage readjustment of divisions within the group as between the lines east and west. The task involved is one of accounting, and if we would announce the principle the carriers could readily apply it. I have complete confidence in their ability and purpose to apply the rule that we announce. COMMISSIONER EASTMAN has proposed a method which, though perhaps not exact, would immediately result in an adjustment much fairer than the existing basis and one which could be revised from time to time.

Beyond the direct unmerited contribution which the New England carriers have made and are making to the other lines, as the result of our application of the rate-making provisions of the transportation act (and which the New England lines are entitled to have restored to them) the record shows that the New England lines are entitled to increased divisions. We are required to take a group view of the carriers—to regard them as a group transportation machine—and make an adjustment fair to all the parts. They are all essential parts in order that the machine may function as a whole in the handling of through business between the east and west. Each line thus essential to the through movement is entitled to have fair consideration given to all burdens of its operation.

A too-narrow meaning has been given to "service" as the term is used in the transportation act in connection with the division of through rates. Everything which the carrier provides and does makes up the service rendered and which is to be considered in determining divisions. In carrying its many burdens, whatever they may be, in operating its transportation machine under the conditions which surround it, the carrier is rendering service which must be considered. In this case these burdens are the short hauls, the light train load, the complicated and expensive terminal arrangements, disadvantageous position respecting car hire, disproportionate burden of transportation of company fuel, and all factors of burden and expense which the carriers bear in order to furnish transportation. It is no answer to say that the conditions under which the New



England lines operate are responsible for their poor showing. These are the very conditions which these lines are entitled to have allowance made for in determining what is a fair division of the compensation which the shipper pays for all that goes to make up the service rendered to him. These are the conditions which the transportation act says, in a way that is new, must be taken into consideration. As the burdens change, divisions should in common fairness change, and this is both the letter and spirit of the transportation act. As I see it, this is the heart of the transportation act. It is the vital principle which must be given effect if carriers as a whole are to succeed under the transportation act which limits earnings of the group to a fair return upon the properties, as a whole, considered as a group. It is the principle, which having regard to the shifting vicissitudes of carriers is, in the long run, essential to them all. It makes for general reliability of carrier prosperity and the stability of security values and guards the public interest. It provides the support and assures the justice which vindicate the firm hand of governmental regulation. We may and should construe the transportation act so as to effect this great result.

The requirement that all conditions under which a carrier operates, be taken into consideration in the division of earnings, does no violence to the rights of any carrier. Under the scheme of the transportation act, this requirement works out as a part of the rate-making plan, by which the needs of each carrier are supplied by the users of transportation and not by the other carriers. The earnings are allowed, through the rates prescribed, for the purpose of being put to such use, and they could not be allowed except for such purpose. The principle is only a recognition of the fact that all shippers, wherever they are, are vitally interested in the maintenance of efficient transportation everywhere and fairly may be charged with a share of the expense of such maintenance. The rate basis to be fixed from time to time provides for this. The carrier collecting the authorized charge acts not merely for itself but as the agency for the other carriers for which, under the law, the collection is authorized.

It is not necessary to construe, so that its application to this case will involve serious legal questions and the giving to one carrier what is due to another, the requirement that in determining divisions we shall give consideration to "the amount of revenue required to pay their respective operating expenses and a fair return on their railway property held for and used in the service of transportation." This provision means that service in all its aspects and everything the carrier does and provides shall be considered. Operating expenses and taxes must be paid to enable

the transportation machine to function. The other carriers, as well as the New England lines, are interested in maintaining their efficient operation. All earnings on through business are dependent upon the functioning of the New England lines. Because of the benefits all derive by virtue of the New England lines all should bear their part of the expense of operating them. Similarly a fair return to their owners on the value of the New England lines is not only just but necessary if these lines are to remain efficient. Shippers and other carriers, benefiting from the operating of the New England lines, should pay their share for the use of the New England facilities in through transportation. The value of a machine is an important element in determining just compensation for its use. In fact, the transportation act makes value the basic factor in determining what amounts shall be paid by shippers as compensation for transportation.

The value of the New England lines was considered and included by us in Ex Parte 74 in determining the aggregate amount to be paid by shippers for the use of the group transportation machine. The low earnings of the New England lines were considered in determining the amount of additional income to be raised to make up the required aggregate compensation. The shippers are now paying on the basis of value of the New England lines and as compensation for their use. After including the value of these lines, to determine the aggregate amount to be raised as compensation for all of the lines in the group, we translated this amount into a percentage rate increase on all traffic moving within all parts of the group. The effect of this action by us was, because of the difference in traffic density, to transfer to the other lines a part of the compensation which, under the statute, was to be raised, and which we started out to raise, for the New England lines. It is now our duty to correct this unsound result and direct these earnings back to the New England lines, where they belong under the statute and by virtue of our action which created them. To do less is not only to perpetuate gross injustice but to sanction a result which, it seems to me, is not in harmony with the spirit of the law. As I see it we are not asked to give to the New England lines something that belongs to the others, but to end a misappropriation in violation of law, by the other lines, of funds that belong to the New England lines. In fairness and justice the burdens of all carriers participating in through traffic, including a fair return to their owners upon their respective investments, should be considered in making an equitable division of the returns from their joint activities. The transportation act embodies these rules of simple justice. This act, recognizing that in the last analysis all enterprises involve only dealings between individuals and their relations to one

another, requires that the rules of common fairness as between man and man shall be applied by railway public service corporations. We are the nation's agency to enforce these rules. Acting in the nation's power, we should not say we can not. I have so valued the transportation act, and have had such high hopes that I can not adopt the majority conception of our power and duty.

If it be true that we can not do complete justice immediately, this is no reason why we should not do partial justice. We can immediately, by a percentage readjustment, see that the New England lines receive what is now being diverted from them to the lines west as a result of their inclusion in determining the value of the properties in the group for rate-making purposes. We can require that the New England lines be given that part of the increased earnings of the group, which was authorized for them by us in Ex Parte 74, because of the lower earnings of these New England lines. We can correct the carriers' methods so that the scheme of the transportation act to raise moneys to compensate for the use of all parts of the group machine shall not be defeated, after the moneys have been raised, as a result of our action in fixing different percentage increases on freight and passenger traffic and of the different ratios as between freight and passenger traffic on the different lines. The record shows that before Ex Parte 74 was decided, it was appreciated that a general percentage increase throughout the group would not accomplish the results aimed at but would result in injustice to the New England lines, and that division changes would be necessary to accomplish justice. The plain duty of the carriers was to make these changes. It can be calculated that as a result of the recent world readjustment the New England lines have been required to carry a disproportionate burden in the matter of fuel costs, labor, and in other respects. These increased burdens should be borne by all lines equally and this disproportionate burden of the New England lines should be distributed over the others in the group, which can be done by a mere change in division percentages. Other principles can definitely be announced for prompt application by the carriers.

A percentage increase of all divisions to the New England lines is not offensive, because it would result in increasing certain divisions which are not now too low. The divisions of rates are not in themselves the ultimate end. They are the means by which fair relations between the carriers are established in the aggregate. If the relation resulting from the divisions as a whole is fair, no harm will be done, if temporarily, particular divisions are made too high or too low. An adjustment unsound in detail may be required as a temporary expedient if in its general result it is fair

and can be changed from time to time as consistency may require. Our report in Ex Parte 74 is a precedent for this course.

Nor are we impeded in acting in this case by the requirement of the statute that we prescribe divisions "to be received by the several carriers." Compliance with this provision is not difficult. By according a percentage increase to the New England lines and applying a percentage decrease to the other lines the result will be divisions prescribed by us to be received by the several carriers.

The representatives of the complainants adopted sound procedure in seeking a readjustment of the relations as a whole. Conditions were serious and required a major operation. As efficient men charged with great responsibility they had no other course. Immediate justice, to which the New England lines were entitled, could not be obtained in any other way. A delay of justice in such a case is a denial of justice. The display by the defendants in this case of the traditional and not unnatural attitude of carriers to protect their revenues has been sufficient to justify the complainants in their view that a short-cut course to general directions by us was necessary. Similarly, we should be convinced that little will be accomplished promptly unless we announce the rules that are to guide the carriers.

CAMPBELL, *Commissioner*, dissenting:

I find myself in accord with the dissenting opinion of COMMISSIONER EASTMAN. It seems to me that subdivision (6) of section 15 is clearly intended to cover just such a situation as exists in New England. The transportation act, 1920, gave to the Commission power and authority to group railroads into sections for rate-making purposes. It must of necessity follow that where rates are made by groups that some roads must receive larger returns than others. It must follow that there will be a great difference in "the amount of revenue required to pay their respective operating expenses, taxes," etc. It must have been in the minds of the legislators that rate making by groups would have that effect, that it would fatten some roads and have a tendency toward starving others in the same group. Now, I further believe that the legislators intended the act of 1920 to be administered in such a manner as to perpetuate private ownership and to provide a means whereby the Commission could sustain the weaker road, which obviously is the road which requires the aid more than the strong and vigorous line, and therefore and for that purpose subdivision (6) of section 15 was enacted in which the Commission is required when considering divisions to take into consideration things which never have been taken into consideration before. It seems to me that the act is very specific, and a careful reading of it

must convince one that Congress had this very thought in mind. Subdivision (6) says in reference to prescribing divisions of joint rates:

In so prescribing and determining the divisions of joint rates, fares and charges, the Commission *shall* give due consideration, among other things, *to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers* and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance *which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.* [Italics are mine.]

It will be seen by the careful wording of this section that it states that the Commission "shall." It does not say we may or may not, but it says we "shall" take into consideration "*the amount of revenue required to pay their respective operating expenses,*" using the word respective, which clearly indicates that the needs of one carrier as compared with the needs of another carrier joining in the joint rate shall be considered. Then it requires us, going back again to the word "shall" to consider "*the importance to the public of the transportation services of such carriers,*" thus requiring us to consider the necessity of the public to be served with transportation, and clearly indicating, it seems to me, that we must consider the dire results which might happen should any railroad within that group be starved into bankruptcy. And then going back again to the word "shall," they say that we shall consider "*any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge,*" thus again requiring us to consider the requirements of one carrier as against another.

I am authorized by COMMISSIONER McCHORD to say that he shares in these views.

No. 11304.

AMERICAN SMELTING & REFINING COMPANY ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

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*Submitted November 22, 1920. Decided June 30, 1921.*

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Demurrage charge and average free time at Baltimore, Md., on carload shipments of coke for export, moved on domestic bills of lading, between February 10 and December 31, 1918, found not unjust or unreasonable. Complaint dismissed.

*Arthur B. Hayes* for complainants.

*John F. Finerty* for Director General, as Agent.

*Charles R. Webber* for other defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS HALL, POTTER, AND ESCH.

HALL, *Commissioner*:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are corporations engaged in mining, smelting, and refining copper. By complaint filed February 28, 1920, as amended, they allege that demurrage charges accruing at Baltimore, Md., between February 10 and December 31, 1918, on carload shipments of coke for export to South America were unjust and unreasonable. They ask for reparation and the waiver of outstanding undercharges. The complaint is based on two general grounds: (1) that no demurrage should accrue when the detention of cars was due to fault of the carriers, or to control exercised by various governmental agencies, and thus was not within the power of complainants to prevent, and (2) that the allowance of only three days average free time and the assessment thereafter of a demurrage charge of \$3 were unreasonable. Demurrage charges are stated in amounts per car per day.

The shipments, averaging 36.48 net tons, originated within an average distance of 400 miles from Baltimore. They moved on domestic bills of lading under rates which included the service by  
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the rail carriers of dumping the coke into vessels at the port but did not include the service of trimming the load in the vessel, which, under separate charge, was also performed by the rail carriers. The demurrage charges were assessed under tariffs of the Director General of Railroads operating the Baltimore & Ohio and Pennsylvania railroads. The main cause of detention was that the cars arrived at the pier in Baltimore either too early or too late for the vessels in which the coke was to be exported.

Prior to February 10, 1918, the demurrage charge was \$1 with free time of 10 days straight, or 5 days under the average agreement. On that date the demurrage charge was increased to \$3 and the free time reduced to 3 days under an average plan which became applicable, regardless of agreement, and replaced both the average agreement and the straight demurrage. <sup>(1)</sup> On March 3, 1919, after the movement, the demurrage charge applicable on the Baltimore & Ohio was reduced to \$2. On April 1, 1919, a like reduction was made effective on the Pennsylvania and the average free time on both lines was increased to 10 days. Complainants expressed themselves as satisfied with the latter basis.

Throughout the period of movement this country was at war, but prior to June 1, 1918, government control over complainants' shipments was not strictly exercised, although it was necessary for com-

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<sup>1</sup> The changes thus wrought on February 10, 1918, may be illustrated by the Baltimore & Ohio tariffs. Prior to that date the rule was:

"Ten (10) days free time will be allowed on each car held for unloading, except

(a) When consignees have executed the average agreement, \* \* \* an average of five (5) days per car free time will be allowed,"

thus giving to the consignee the option of selecting either the straight or the average plan. On February 10, 1918, this rule was superseded by one reading: "An average of three (3) days per car free time will be allowed." There is here no choice; and the same is true of the rule which on April 1, 1919, increased the average free time to 10 days.

The tariff effective February 10, 1918, also contained the following rules:

**CARS SUBJECT TO RULES.** Cars containing anthracite coal, bituminous coal or coke for trans-shipment direct by vessels, or to be stored for shipment by vessels, when held for or by consignors or consignees for unloading, forwarding directions, or for any other purpose are subject to these rules, \* \* \*

**COMPUTING TIME.** (a) A notice of arrival must be sent or given to the consignee in writing or as otherwise agreed to by carrier and consignee upon arrival of cars and billing at destination yards.

Time will be computed from the first 7 A. M. after the day on which notice of arrival is sent or given to the consignee. \* \* \*

(b) A car shall be considered as released: 1. At the time vessel registers for the cargo or fuel supply of which the coal or coke dumped into such vessel is a part, except that when cars are unloaded before the vessel registers such cars shall be released when unloaded. \* \* \*

**"DEMURRAGE CHARGE.** Settlement shall be made on basis of the detention to all cars released during each month. The date of arrival notice shall be subtracted from the date of release. From the total days' detention to all cars thus obtained deduct three days' free time allowance for each car; the remainder, if any, will be the number of days to be charged at the rate of \$3.00 per car per day. Excess credit days of any month can not be deducted from excess debit days of another month."

plainants to secure an export license from the War Trade Board whenever they wished to export a shipload of coke. After June 1, 1918, the United States Shipping Board in its control over shipping either allocated ships for complainants' use, or permitted complainants to charter vessels from their owners subject to that board's approval. Complainants had two steamers which remained under their control throughout the period of the war, except that after August 30, 1918, one was taken for other purposes by the Shipping Board. In addition, various other vessels were used for transportation of complainants' coke to South America. Complainants notified the Shipping Board of their desire to ship and that board advised them when vessels would be placed. The United States Fuel Administration assumed control of coke about August 1, 1918. The price of coke was fixed by the government. The Fuel Administration, upon advice of the date when the vessel would be placed and of the amount of coke required therefor by complainants, selected the points of shipment and usually divided the order among several coke producers. The shipments were consigned to complainants at the port. On August 19, 1918, in order to relieve accumulation at Baltimore, rail shipments of coke were subjected to the permit system. Complainants contend that thereafter practically the entire movement of their coke was in the control of the government. They secured export license from the War Trade Board and presented it, with their requisition for coke, to the Fuel Administration. The latter then arranged with the Shipping Board for a vessel, obtained the necessary rail permit from the Railroad Administration, and placed orders for the coke with the producers. Complainants also notified the Railroad Administration of each requisition for a cargo of coke.

Under an arrangement, in which complainants acquiesced, some carloads consigned to them were dumped into vessels chartered by or allocated to others, and other carloads not consigned to them were used to make up complainants' cargoes. This was apparently done in order to avoid much drilling of cars and switching delays in congested yards, and to expedite the loading of vessels, thereby saving complainants from vessel demurrage, which was exceedingly high. The following is an example of one kind of substitution: A vessel of 4,500 net tons capacity, chartered by or allocated to complainants, registers for a cargo. That tonnage approximates 123 average carloads. Complainants have 150 cars at Baltimore. Of these 100 are readily accessible, and they are dumped. To make up the full cargo 23 cars consigned to others, and likewise readily accessible, are dumped into the same vessel, and the remaining 50 of complainants' cars are left at the pier. But, irrespective of the particular cars which are in fact dumped, demurrage against complainants ceases



from the date of vessel registry on 123 of their cars which were first to arrive at Baltimore, whether the 123 were actually or constructively at the pier. Thereafter demurrage continues to accrue against complainants on 27 cars, and against the other consignees on their 23 cars taken to complete complainants' cargo.

The next vessel to register may have been chartered by one of the other consignees against whom demurrage stops in like manner upon a number of cars equal to those dumped even though some of the cars dumped were in fact consigned to complainants. Complainants contend that they are not liable for certain of the car demurrage growing out of such substitutions. The bills therefor have not been paid except in a few cases of clerical error. At the time of hearing in May, 1920, this contention was at issue in an action in court brought by defendants to recover the undercharges.

Complainants state that throughout the period covered by the complaint the time required to furnish cars and move coke to Baltimore was so uncertain that neither they nor the governmental agencies were able to forward shipments so as to have them arrive at approximately the same time as vessels were placed; that the demurrage, therefore, accrued through fault of the carrier, in this case the Director General. They contend that transportation conditions at the time of movement were similar to those after April 1, 1919, and that the charge of \$3 with average free time of 3 days was therefore unreasonable to the extent that it exceeded the charge of \$2 with 10 days average free time established on that date; also, that the charge was unreasonable as compared with the charge of \$1, with 10 days free time, in effect prior to the movement.

They further contend that if the charge of \$1 prior to February 10, 1918, and of \$2 subsequent to the movement, was sufficient to impel shippers to promptly release cars, then the \$3 charge assessed on these shipments was unreasonable. They urged that the reasonableness of a demurrage charge depends upon whether \$1, \$2, or some other amount can and does result in the speedy unloading of equipment. It is evident that the free time of 10 days straight, or 5 days under application of the average agreement, and a charge of \$1 thereafter, was not sufficient to bring about the desired result prior to the effectiveness of the reduced free time and increased charge here assailed, for in one of complainants' exhibits it is stated that in January, 1918, and earlier—

In view of delays and necessity of getting coke to [complainants'] plants to prevent their shutting down, orders were placed for which we had no steamer available at time of placing, so that coke would be available when steamer could be chartered.

Demurrage accrued on a number of the cars containing the coke so ordered and is included in this complaint. So far as the record discloses, this practice was not continued after the charges were increased and the free time reduced.

Complainants compare the demurrage rules assailed with the longer free time and lower charges applicable at various south Atlantic and Gulf ports, but greater congestion existed at north Atlantic ports and the larger part of the traffic for war purposes passed through the latter. They urge that longer free time should have been allowed on coke than on coal, especially because coke is damaged by the handling incident to storage. They also contend that it was impossible to release shipments of coke within the free time allowed; that the control exercised by the government did not increase efficiency, as the average detention on their shipments was greater after than before August 1, 1918; that in certain instances incorrect information was given as to the arrival of boats; and that the control by the government after August 1, 1918, was such that complainants could do nothing to reduce car detention.

Defendants take the position that government control facilitated complainants' shipments; that the permit system, in particular, relieved the coke congestion at Baltimore; that shippers of other commodities, especially of coal, were also assessed demurrage; and that the accrual of demurrage was due mainly to the fact that complainants did not order the coke far enough in advance of the dates on which the vessels were scheduled to register for cargoes.

It is beyond our jurisdiction to pass upon the alleged negligence of these governmental agencies in failing, as asserted by complainants, to efficiently cooperate in bringing forward these shipments and thereby to obviate demurrage. The various steps taken by the government during the war were for the benefit of the public in general, including both shippers and carriers, and were intended to and did facilitate commerce. Complainants were fully cognizant of the procedure prescribed and followed by these agencies.

Of these governmental agencies the Railroad Administration alone, in the person of the Director General of Railroads, as Agent, is a party to this proceeding. It has not been shown that any of the demurrage assessed was the direct result of any fault or error on the part of the Director General. These shipments moved on domestic bills of lading and were consigned to complainants at Baltimore. While in cars at the port they were under the full control of complainants who could have sold the coke locally, reconsigned it, or disposed of it in any other way.

Our decision in *Galveston Commercial Asso. v. A., T. & S. F. Ry. Co.*, 25 I. C. C., 216, is cited by complainants as conclusive in their favor. We had there under consideration the movement of cotton  
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on through export bills of lading from interior points in the United States to foreign destinations via the port of Galveston, Tex. The issue presented was whether the shipper at the interior point, who had nothing whatever to do with the cotton pending its delivery at the foreign destination, or the ship agent at the port who had entire control over the through movement, was liable for demurrage which accrued on the cars held at Galveston to await arrival of the vessel. We found that the burden of paying the demurrage should be cast upon the ship agent. We clearly distinguished such through export shipments from shipments like these, which moved on domestic bills of lading to Baltimore and were there subject to complainants' disposition orders, saying, at page 223:

If the property were handled upon a local rail bill to the port and a water bill from the port, there would be no objection to charging demurrage against the shipper, since he then takes possession of his property at the port and arranges for the unloading and storing of his freight awaiting the coming of the ship.

In *Wholesale Coal Trade Asso. v. Director General*, 58 I. C. C., 15, 27, we had under consideration demurrage at tidewater on coal for transshipment, and said:

So far as defendants are concerned they need not look beyond the billed consignee, \* \* \* in determining the amount of the charges due.

In *Tidewater Demurrage*, 46 I. C. C., 677, we found justified a proposed reduction from five days to three days in the free time accorded at Baltimore, under the average agreement plan then in effect, on shipments of coal or of coke for transshipment by water. Irregularity of movement to the ports and the impossibility of accumulating a full cargo within the free time allowed were urged by protestants in that proceeding in opposition to the proposed reduction. But it appeared that a number of shippers were able to conduct their business within the free time proposed, and that the irregularity of movement was caused to a large extent by congestion of traffic at the ports. In *Wholesale Coal Trade Asso. v. Director General*, *supra*, we found not unreasonable three days average free time and the charge of \$3 per day thereafter established on February 10, 1918, applicable on coal for transshipment at Baltimore and other north Atlantic ports from November 11, 1918, to March 2, 1919, inclusive. It is a matter of common knowledge that water craft are operated under conditions which make it impossible to predict at all times the precise date of docking and clearing. The rail carriers can not be held responsible therefor. In *Export Free Time*, 47 I. C. C., 162, 177, decided November 12, 1917, we said:

These are extraordinary times. Our nation has entered the great war that has been raging in Europe for more than three years. Shippers of the country

are now, and have been for more than a year, experiencing car shortages, terminal congestion, and transportation difficulties to an extent never before known.

We express no opinion upon the question of liability for the outstanding undercharges, a question determinable only by the court having jurisdiction and upon the facts in each case. *Conf. Ruling 314*. On this complaint we must inquire into the justness and reasonableness of the demurrage schedules in effect at Baltimore as applicable to these shipments, but, after determining those issues, we leave to the court determination of the disputed questions of fact. *Heid Brothers v. E. P. & N. E. R. R. Co.*, 55 I. C. C., 416.

Upon this record we find that the demurrage charge and the average free time assailed were not unjust or unreasonable. The complaint will be dismissed.

**POTTER, Commissioner**, dissenting:

I am unable to agree with the conclusions of the majority in their entirety.

The extent to which the government exercised control over the transportation of the shipments here under consideration was not the same during different portions of the period covered by the complaint. During the earlier portion the government, through the Railroad Administration, exercised absolute control over the railroads, but the complainants were free to make their own arrangements for the purchase and shipment of the coke from the points of origin, and for its ocean transportation. During a later portion the government controlled the railroads and, through the Shipping Board, exercised absolute control over the ships, but complainants still retained their control over the purchase and shipment of the coke from the points of origin. During the remainder of the period the government controlled not only the railroads and the ships but, through the Fuel Administration, also determined when, and from what points the coke should be shipped. It was also necessary to obtain from the War Trade Board a license to export the coke, and shipments were not allowed to move from points of origin until a permit had been obtained from the Railroad Administration, a prerequisite to the issuance of which was the reservation of vessel space to take the shipments from the port.

I am in accord with the conclusions of the majority in so far as they relate to demurrage which accrued during the first two portions of the period in question above referred to. As to the remainder of the period I entertain a different view.

Demurrage charges have their warrant and purpose in bringing about the expeditious release of railroad equipment. They are in the nature of penalties imposed upon shippers for delays on the  
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part of the shippers. In another aspect they are in the nature of compensation to the owner of the equipment for the loss which the shipper causes by unduly delaying its release. The only warrant for the collection of demurrage is a shipper's default.

These shipments were at all times intended for export. The complainants had urgent use for the coke at their South American smelters and no use for it anywhere else. Although these shipments were consigned to complainants at the port upon domestic bills of lading, and were within the technical control of the consignees after they arrived at the port, these are matters of form rather than substance. The real and substantial fact is that the government, through its various agencies, had complete and absolute control over the transportation of these shipments from the beginning to the end. The responsibility for the detention at the port, therefore, rested not upon the complainants but upon the government. It is beyond question inequitable and unjust that these complainants should pay demurrage. It is supported on the theory that the Director General, an agent of the government, was separate and apart from the government which, through its agent, can profit from its own wrong. I see no occasion for so effectuating an injustice.

The tariffs provided for the application of the demurrage rules to shipments held "for or by" consignees. It is my view that these shipments were not so held and that under the tariffs no demurrage accrued.

No. 11764.

IN THE MATTER OF INTRASTATE RATES WITHIN THE  
STATE OF TEXAS.

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*Submitted May 9, 1921. Decided July 5, 1921.*

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On further hearing, *Found*:

1. That the interstate and intrastate rates on cotton linters within Texas are so related that disturbance of that relation would contravene the interstate commerce act, and that restoration of the former 75 per cent rate relation of cotton linters to flat cotton moving in interstate or foreign commerce is not warranted.
2. Such a reduction in the intrastate rates on cotton linters as is here sought would result in unjust discrimination against interstate and foreign commerce, and no modification as to such rates of our original findings and order is warranted by this record. Former report, 60 I. C. C., 421.

*T. L. Beauchamp and Wallace E. Hawkins* for state of Texas and Railroad Commission of Texas.

*A. H. McKnight, J. F. Garvin, J. B. Payne, L. M. Hogsett, W. F. Murray, M. J. Dowlin, Horace Booth, A. C. Fonda, N. A. Stedman, C. W. Owen, J. S. Hershey, John T. Bowe, G. H. Muckley, J. C. Manghum, and W. F. Sterley* for respondents.

*F. R. Dalzell* for Houston Cotton Exchange and Galveston Cotton Exchange; *Edgar L. Pearson* for Edgar L. Pearson & Company; and *Adams Calhoun* for Texas Cotton Seed Crushers Association.

REPORT OF THE COMMISSION ON FURTHER HEARING.

*HALL, Commissioner*:

In *Intrastate Rates within the State of Texas*, 60 I. C. C., 421, we found, among other things, that the increases made by respondents pursuant to our findings in Ex Parte 74, and then in effect in the western group, resulted in reasonable rates for interstate transportation within that group, and that the failure of respondents to increase correspondingly their rates for intrastate traffic within the state of Texas had resulted and would result in intrastate rates lower than the corresponding rates contemporaneously maintained on interstate traffic; in undue preference of persons and localities in intrastate commerce within that state; in undue prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce. We prescribed reasonable rates to remove the undue preference and prejudice, and the unjust discrimina-

tion. Increased intrastate rates were accordingly established, and were generally made effective on March 18, 1921.

In concluding our findings we said:

The above findings are without prejudice to the right of the authorities of the state of Texas or any other interested party to apply in the proper manner for a modification of our findings or order with respect to any specified intrastate rate, fare, or charge on the ground that the latter is not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

Thereafter, upon application of the Railroad Commission of Texas, this proceeding was reopened for further hearing as to the propriety of the rates on cotton linters within the state of Texas.

These rates had been made for nearly 20 years on the basis of 75 per cent of the rates on cotton until, on June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, the rates on cotton were increased by 15 cents per 100 pounds and the rates on cotton linters were increased to equal the new cotton rates. This parity continued until August 26, 1920, when the interstate rates on both cotton and cotton linters within the western group, which includes the rail carriers serving Texas, were increased 35 per cent under our findings in Ex Parte 74, and the intrastate rates on both were increased 33½ per cent under an order of the Texas commission. These intrastate rates were increased to correspond with the interstate rates on March 18, 1921, under our original findings and order in this proceeding.

Meantime, on February 25, 1921, the Texas commission had entered an order requiring the maintenance of rates on linters at 75 per cent of the rates on uncompressed cotton, but this order has never become effective.

Cotton rates within Texas are for the most part made on a distance commodity scale. The maximum intrastate rate on flat or uncompressed cotton, hereinafter referred to as cotton unless otherwise stated, is 89 cents per 100 pounds, any quantity, for all distances over 210 miles. The same rate applies on linters. It represents an increase of 38 cents, or 75 per cent, on cotton, and of 51 cents, or 134 per cent, on linters, over the rates in effect on June 24, 1918.

Cotton linters are described as a by-product of the oil mill. In crushing the seed much of the fiber is removed in order to secure a high yield of oil and meal. Linters are chemically the same as cotton, but can not be put to the same uses because of their short fiber and other defects. They are ordinarily used for low-grade weaving and in the manufacture of mattresses, bedding, pads, and other articles for which cotton would be too expensive. Of late

they have been used to some extent in the manufacture of paper. During the recent world war they were in great demand for use in the manufacture of powder and other explosives, with corresponding effect upon their market value.

When this country was drawn into the war the federal government took over practically all the linters, fixed a price based on delivery at the mill, and required production of 145 pounds of linters from 1 ton of cotton seed. The ordinary production had not exceeded 20 to 40 pounds per ton, but in response to the government's requirement some mills increased the yield to 200 pounds. Such linters were of extremely low grade, available for use in the manufacture of munitions, but ill adapted for other purposes. After the signing of the armistice in November, 1918, the demand for munition purposes fell off, and a large amount of these low-grade linters remained on the hands of the producers. At the time of the hearing, May 9, 1921, there were approximately 76,000 surplus bales in Texas, representing in part an accumulation brought over from previous years.

The linters produced in Texas are chiefly consumed outside of the state. Before the war many were exported to Germany, but that market is now closed. On account of general business conditions and loss of foreign markets there is practically no demand for linters, especially those of low grade, and when salable at all they bring from 0.5 to 0.75 cent per pound. Instances were given of the burning of linters for fuel, or breaking up of the bales to salvage the bagging and ties.

Apparently the Texas holders hope rather than expect that a reduction in rates will stimulate the movement. The record warrants the inference, if not the conclusion, that rate reduction would not have this effect.

Little evidence was offered as to the reasonableness of the rates. Those on cotton are not attacked. The contention of the Texas interests that linters should take rates which are 75 per cent of the cotton rates is based on the following grounds: This relationship was observed for nearly 20 years prior to general order No. 28; the value is much less than that of cotton; linters load as heavily as cotton; the loading is done by the oil mills at their expense, whereas cotton is generally loaded by or at the expense of the carriers; concentration of linters is not needed or customary, but cotton usually moves through concentration points; prior to the effective date of consolidated classification No. 1 cotton linters, compressed to a density of less than 15 pounds per cubic foot, which is said to be the condition in which they usually move, were rated second class in the western classification, and cotton of the same density was rated



first class. With the exception of compressed cotton, they were rated alike, and in the consolidated classification both are rated first class. Class rates are of little significance, as both usually move on commodity rates.

An exhibit was introduced showing the earnings per car on linters under the present and proposed rates for 210 miles, where the distance scale runs out, and 375 miles, the estimated maximum haul, compared with the earnings per car on all commodities, taking commodity rates under Texas lines tariff No. 2-F, I. C. C. No. 100. No evidence of transportation conditions was offered, and no claim was made that all the commodities named are comparable with linters from any point of view, but it is claimed that some are. The earnings per car on these commodities are computed at carload rates and minimum weights; those on linters at the any-quantity rate on a carload of 37 bales, averaging 530 pounds per bale, or 19,610 pounds. This seems to be the amount that can be loaded in one tier in an ordinary box car. But it does not appear that the average loading of linters even approximates that weight. Respondents' exhibits of movements made between Texas points show that the loading in many cases was considerably less than 19,000 pounds, although the average of five carloads from Fort Worth to Sugarland somewhat exceeded that weight.

Respondents contend that the rates on linters are, if anything, too low rather than too high, particularly in comparison with rates on compressed cotton. During the 1919-20 cotton season compressed cotton moving to Houston averaged 77.8 bales per car, and uncompressed cotton 34 bales per car. In *Louisiana Cotton*, 46 I. C. C., 451, we found that rates on flat or uncompressed cotton 20 cents higher than on compressed cotton had been justified. The evidence there showed that flat cotton occupied approximately twice as much car space as compressed cotton. In Texas, prior to August 26, 1920, the rates on flat cotton were 10 cents higher than on compressed cotton. The difference is now 18.5 cents. Respondents also introduced exhibits comparing the earnings on linters with those on other commodities.

The Texas interests recognize that to reduce the intrastate rates without a corresponding reduction in the interstate and export rates would result in undue prejudice to shippers in interstate and foreign commerce and unjust discrimination against interstate commerce. A reduction in the intrastate rates to Galveston or Houston, for example, would force a corresponding reduction in the interstate or export rates to those ports.

Upon the record we find that the interstate and intrastate rates on cotton linters within Texas are so related that disturbance of

that relation would contravene the interstate commerce act, and that restoration of the former 75 per cent relationship of cotton linters to flat cotton moving in interstate or foreign commerce is not warranted. We therefore find that such a reduction in the intrastate rates on cotton linters as is here sought would result in unjust discrimination against interstate and foreign commerce, and that no modification of our original findings and order in respect of rates on cotton linters is warranted by the record. No order is necessary.

COMMISSIONERS McCHORD and EASTMAN dissent.

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INVESTIGATION AND SUSPENSION DOCKET No. 1269.<sup>1</sup>  
EXTENSION OF MEMPHIS-SOUTHWESTERN SCALE TO  
ADDITIONAL SOUTHWESTERN POINTS.

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*Submitted June 3, 1921. Decided July 12, 1921.*

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Proposed class rates between points in Kansas and points in Oklahoma; between points in Kansas and Oklahoma and points in Texas; between points in Texas, on the one hand, and points in Arkansas and in Louisiana, and Memphis, Tenn., Vicksburg and Natchez, Miss., on the other; and between points in Oklahoma on interstate traffic, not justified. Tariffs under suspension ordered canceled without prejudice to the filing of tariffs in conformity with the findings in this report.

*J. R. Turney, Charles D. Drayton, and F. A. Leland* for respondents; *M. J. Dowlin* for Chicago, Rock Island & Gulf Railway Company and Chicago, Rock Island & Pacific Railway Company; and *Fred C. Dumbeck* for St. Louis-San Francisco Railway Company.

*Carl Giessow and Edgar Moulton* for New Orleans Joint Traffic Bureau; *Edward A. Haid* for Little Rock Board of Commerce, Fort Smith Traffic Bureau, and Pine Bluff Chamber of Commerce; *C. N. Nesom* for Alexandria Chamber of Commerce; *F. E. Potts and Edgar Moulton* for Lake Charles Association of Commerce; *G. J. Vizard* for Little Rock Board of Commerce; *C. D. Mowen* for Fort Smith Traffic Bureau; *E. M. Gleason* for Texarkana Freight Bureau; *A. U. Tadlock* for Jonesboro Freight Bureau; *W. B. Redding* for Pine Bluff Chamber of Commerce; *F. A. Leffingwell* for Waco Chamber of Commerce and San Antonio Freight Bureau; *Ed. P. Byars* for Fort Worth Freight Bureau, Denison Chamber of Commerce, West Texas Chamber of Commerce, and northeast Texas group; *Clifford B. Jones and Porter A. Whaley* for West Texas Chamber of Commerce; *Frank H. Andrews* for Board of Trade of Vicksburg, Miss.; *E. I. Jackson* for San Angelo Chamber of Commerce; and *J. W. Chatham, jr.*, for Chamber of Commerce of Wichita Falls.

*S. D. Goodstein and G. S. Maxwell* for Dallas Chamber of Commerce and northeast Texas group; *L. M. Shepardson* for Orange

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<sup>1</sup> This report also embraces Fourth Section Application No. 11761 of *F. A. Leland*, agent.

Chamber of Commerce; *Hamlin Palmer* for Board of City Development of Amarillo, Tex., and Panhandle-Plains Chamber of Commerce; *H. D. Driscoll* for Oklahoma Traffic Association and Oklahoma City Jobbers and Manufacturers Club; *W. J. Tancell* for St. Louis Chamber of Commerce; *James S. Davant* for Memphis Freight Bureau; *A. F. Vandergrift* for Louisville Board of Trade; *Louis B. Boswell* for Freight Bureau of Quincy, Ill.; and *W. N. King* for northeast Texas group.

*B. E. Reed* for Cudahy Packing Company; *John A. Wills* for Hirsch Brothers Company, Goodwin Preserve Company, Hyman Pickle Company, Morgan Abbott Barker Company, and Curd Blakeman; and *Morgan J. Parlin* for Belknap Hardware & Manufacturing Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

By schedules filed to become effective on various dates in December, 1920, and January and February, 1921, respondents propose to revise, as hereinafter explained, their class rates between points in southern Kansas and points in Oklahoma and Texas; between points in Oklahoma and points in Texas; between points in Oklahoma on interstate traffic; between Texas common-point territory on the one hand and Memphis, Tenn., Vicksburg and Natchez, Miss., Baton Rouge and New Orleans, La., and points in Louisiana generally west of the Mississippi River on the other; and between points in Arkansas and points in Texas. Numerous protests having been filed by shippers and commercial organizations, the schedules were suspended until April 30, 1921, and the effective dates were voluntarily deferred by the respondents until August 28, 1921. Rates and differentials are stated herein in cents per 100 pounds.

As a result of our decision in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, generally known as the *Shreveport Case*, a scale of class rates, referred to herein as the Shreveport scale, was established between Shreveport, La., and all points in Texas common-point territory, and intrastate in Texas between points in that territory. Subsequently, following formal complaints filed on behalf of commercial interests at Ruston and Monroe, La., and Natchez, Miss., and the suspension of tariffs filed by the southwestern lines, the Shreveport scale came to be applied for 500 miles and less between points in Louisiana west of the Mississippi River; between Memphis and Mississippi River crossings south thereof and points in western Louisiana; between Natchez and Memphis, on the one hand, and points in Arkansas on the other; between

Natchez and points in Texas common-point territory; between Ruston and Monroe on the one hand and Texas common-point territory; and between points in Oklahoma and points in Texas common-point territory. The Shreveport scale thus became applicable, not only on interstate traffic, as above described, but on intrastate traffic in western Louisiana and in Texas common-point territory. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.*, 39 I. C. C., 287; *Southwestern Class Case*, 48 I. C. C., 379; *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105; *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 52 I. C. C., 558; and *Monroe Chamber of Commerce v. A. & S. Ry. Co.*, 58 I. C. C., 685.

In *Memphis-Southwestern Investigation*, 55 I. C. C., 515, and the related cases there was involved, among other things, the propriety of the interstate class rates from Memphis to points in Arkansas as compared with the corresponding rates within Arkansas. Our order of investigation therein extended the territorial scope of the proceeding so as to include not only the whole state of Arkansas but "contiguous territory in the states of Oklahoma and Missouri." In that proceeding detailed evidence was introduced with respect to the similarity of transportation conditions in the states of Missouri, Oklahoma, Arkansas, Louisiana, and Texas. In our report therein we said:

The conclusion is difficult to escape that the differences in transportation conditions generally are not sufficiently marked to necessitate or to warrant different levels of class rates in the general region here involved.

This was based in part on the following table set forth in the report showing the traffic density in the states named for the year ending June 30, 1916:

State.	Ton-miles of revenue freight per mile.	State.	Ton-miles of revenue freight per mile.
Arkansas.....	718,632	Texas.....	1,570,268
Oklahoma.....	635,977	Southern Missouri.....	720,798
Louisiana.....	672,490		

<sup>1</sup> Including differential territory.

<sup>2</sup> Average for Missouri Pacific, Frisco, Rock Island, and Cotton Belt.

In the same report we said:

Details bearing upon the differences in transportation conditions in the states named are set forth in Appendix No. 2. A careful study of the statistics there given, while showing in some instances marked differences in individual items, leads to the conclusion that, considering all the figures together, a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common-point territory in Texas. The evidence indicates that Arkansas and Oklahoma and

southern Missouri are a homogeneous rate region and that transportation conditions would seem to dictate in general the observance therein of a uniform distance scale.

We accordingly held that the uniform scale of distance class rates prescribed in *Memphis-Southwestern Investigation*, *supra*, hereinafter referred to as the Memphis-Southwestern scale; with the addition of bridge tolls for the Mississippi River crossings, should be applied (a) between Memphis and points in Arkansas; (b) between points in Arkansas; (c) from Memphis and St. Louis, Mo., to points in southern Missouri as described in the report; (d) from Natchez to points in Arkansas for distances not in excess of 350 miles; (e) from Monroe and Shreveport to points in southern Arkansas; (f) from St. Louis to points in Arkansas<sup>2</sup>; (g) generally for distances not in excess of 850 miles between points in Arkansas and points in Missouri "B" territory; and (h) between points in Arkansas and in Missouri "B" territory on the one hand and points in Oklahoma, on the other, for 350 miles. Missouri "B" territory is that portion of the state of Missouri generally on and south of the line of the Missouri Pacific Railroad extending from St. Louis to Kansas City through Sedalia, Mo. Subsequent to the decision in *Memphis-Southwestern Investigation*, the scale therein prescribed was extended for all distances up to 600 miles between Missouri "B" territory and Arkansas on the one hand and points in Oklahoma on the other. The Memphis-Southwestern scale also applies between Vicksburg and points in Arkansas. In addition to these scales there are many other mileage scales, specific rates, and group rates in this territory published according to the desires of different carriers or under state authority, which have resulted in a rate structure that is a "tangled maze of inconsistencies and incongruities." These various rates and conflicting scales are sufficiently set out at page 524 of the report in *Memphis-Southwestern Investigation*, and it will be unnecessary more fully to describe them here. Respondents state that this revision is an effort to bring about a more harmonious adjustment of the class rates in the southwestern territory. They propose by the tariffs under suspension to establish throughout the following territory, for 500 miles and less, the Memphis-Southwestern scale for single-line application, and substantially the joint-line arbitraries prescribed in connection with the Shreveport scale, as increased June 25, 1918, under general order No. 28, and on August 26, 1920, under *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as Ex Parte 74:

<sup>2</sup> Rates from points in western trunk line, central, and southeastern territories on the one hand to points in Arkansas on the other are based differentially over rates from St. Louis, and, therefore, the Memphis-Southwestern scale is the basis from all that territory to points in Arkansas.

Between Oklahoma points and Kansas and Texas points.

Between Oklahoma points and points in Oklahoma on interstate traffic.

Between Texas points and Kansas points.

Between Texas common points and Arkansas points; also Memphis, Tenn.

Between Texas common points and Louisiana points west of the Mississippi River, except Monroe and Shreveport, including New Orleans and Baton Rouge, and points on the Yazoo & Mississippi Valley Railroad and on the line of Louisiana Railroad & Navigation Company between New Orleans and Baton Rouge, and Natchez and Vicksburg, Miss.

Concurrently with the revision hereinbefore described respondents also proposed to revise the present overhead group rates between Kansas groups 1, 2, and 3, Kansas City, St. Louis, Memphis, and Little Rock-Fort Smith groups, and New Orleans on the one hand and Texas common-point territory on the other. But on the alleged ground that the revision proposed would have resulted in substantial increases between many points, including the defined territories, it was withdrawn from this proceeding prior to the hearing. Respondents state, however, that it is their intention to revise in the near future these group rates to the basis of the distance scale here under consideration. They state further that they expect to revise the rates between Kansas City on the one hand and points in Kansas and Oklahoma on the other, and between Louisiana points west of the Mississippi River on the one hand and Memphis and points in Arkansas on the other; also between points in southern Missouri and southern Kansas, so as to harmonize them with the rates herein proposed and those in effect between other points.

By the tariffs under suspension respondents propose to revise the class differentials which are used in the construction of rates from Oklahoma to points in Texas differential territory, that section of Texas generally west of Amarillo, Big Spring, San Angelo, and Corpus Christi. The present differentials are those prescribed by us in the *Shreveport Case*, as increased under general order No. 28 and Ex Parte 74. The change proposed would bring about a basis of differentials from Oklahoma points which is different from that applying from Shreveport, Fort Worth, Tex., or Wichita and other points in Kansas. No attempt was made to justify this revision which is objected to by the Oklahoma interests, and it was stated by the carriers at the hearing that the tariff under suspension which named the revised differentials would be withdrawn.

The distance scale proposed is, for single-line application, the same as that approved in *Memphis-Southwestern Investigation*, where we said that the transportation conditions throughout the entire southwestern territory here under consideration did not warrant different levels of class rates. Respondents assert, (a) that the proposed rates will make substantial progress toward a uniform

and nondiscriminatory distance scale in the southwestern territory and remove many of the present alleged prejudicial and preferential rates; (b) that reductions as well as increases will result, the reductions largely offsetting the increases; (c) that where increases result they will apply principally on less-than-carload traffic, where they will be less burdensome; (d) that where the distance scale is substituted for present group rates, the proposed rates will harmonize with the rates in contiguous territory and generally result in reductions; and (e) that the proposed rates will correct many fourth section departures where the combinations of local rates are now less than the joint rates applying between certain groups, and where the rates between many points are lower than between intermediate points. Respondents also urge that the purpose of the proposed revision is to bring about a more harmonious adjustment and not to increase revenue.

Many different scales of class rates apply in the territory here under consideration, all of which are considered, but particular mention will be made of only the most important.

#### OKLAHOMA-KANSAS RATES.

Two scales of class rates apply between points in Kansas and points in Oklahoma, one known as the standard scale, the other the 100 per cent scale. The 100 per cent scale was established December 19, 1919, by the Director General of Railroads to supersede the then existing jobbers' scale applying from certain jobbing points in Kansas and Oklahoma. It applies from about 60 jobbing points in Kansas to all points in Oklahoma and from about the same number of jobbing points in Oklahoma to all points in Kansas for distances up to 450 miles. The standard scale has alternative application with the 100 per cent scale from nonjobbing points intermediate to jobbing points and applies from all other nonjobbing points. The rates under both the standard and 100 per cent scales apply alternatively with the group rates to or from Kansas City, Omaha, Nebr., and other Missouri River points, the lowest being applicable. The standard scale is for single-line application only, the combination of local rates applying over two or more lines. Joint-line rates from jobbing points are made by adding differentials to the single-line 100 per cent rates. These differentials are generally slightly higher than the proposed differentials for joint-line hauls.

The proposed scale is somewhat higher than the 100 per cent scale but is considerably lower than the standard scale.

The table below, compiled from respondents' exhibits, compares the rates for single-line hauls under the different scales with the proposed rates for representative distances; also the present and proposed joint-line differentials between Kansas and Oklahoma:



	1	2	3	4	5	A	B	C	D	E
<b>For 25 miles:</b>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Standard scale.....	42.5	38	32.5	30.5	22.5	22.5	19	16	14	11
100 per cent scale.....	44.5	38	31	27	21.5	23	17.5	13.5	11	9.5
Proposed scale.....	49.5	42.5	34	29	23.5	25.5	19.5	17	14	13
<b>For 50 miles:</b>										
Standard scale.....	67.5	50.5	44	39	30.5	32.5	27	23.5	19	15.5
100 per cent scale.....	58	50	40.5	35	27	29.5	23	17.5	15	12
Proposed scale.....	61.5	52.5	43	37	29.5	31	24.5	21	19	15.5
<b>For 100 miles:</b>										
Standard scale.....	91	77.5	67.5	59.5	47.5	49.5	40.5	36	27.5	23
100 per cent scale.....	78.5	66	55.5	47.5	35.5	40.5	31	23	20.5	16
Proposed scale.....	87	73.5	61	52.5	41	46	34.5	30.5	26.5	22.5
<b>For 200 miles:</b>										
Standard scale.....	150.5	130.5	113.5	100	79.5	81	64	54	42.5	34
100 per cent scale.....	119	101.5	83.5	71.5	55.5	61	47.5	36	29.5	24.5
Proposed scale.....	130.5	110.5	91	77.5	63	67.5	52.5	45	39	32.5
<b>For 300 miles:</b>										
Standard scale.....	185.5	164	144	125	98	101.5	81	68	50.5	40.5
100 per cent scale.....	151	128.5	106.5	90.5	71.5	77	61	46	38	29.5
Proposed scale.....	162	137.5	113.5	97	77.5	84.5	65	56.5	49.5	40.5
<b>For 400 miles:</b>										
Standard scale.....	211.5	187.5	165.5	144	114	117.5	93	74.5	57.5	47.5
100 per cent scale.....	178	151	124	106.5	83.5	90.5	71.5	54	44.5	35
Proposed scale.....	187.5	159.5	131	112	90.5	97	75	66	56.5	47.5
<b>For 500 miles:</b>										
Standard scale.....	228	204.5	182.5	160.5	121.5	125	100	81	64	54
100 per cent scale.....	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Proposed scale.....	208	176	145	125	100	108	83	73	63	52
<b>Joint-line differentials:</b>										
Present <sup>1</sup> .....	13.5	12	11	8	7	7	7	5.5	4	4
Proposed.....	13.5	11.5	9.5	8	6.5	7	5.5	4.5	4	2.5

<sup>1</sup> Scale ends at 450 miles.<sup>2</sup> Present joint-line differentials apply only in connection with 100 per cent scale.

The 100 per cent scale applies only over the routes of movement, but respondents propose under the fourth section application heard herewith to make the lowest rates under the proposed scale between any points applicable over all routes regardless of whether the shipments move over the rate-making route or over a longer or higher-rated route. The fourth section features will be considered later. Most carload traffic in the southwest moves at commodity rates, and approximately 45 or 50 per cent of the less-than-carload shipments move at the fourth-class rates.

The table below, compiled from protestants' exhibits, compares the rates from Kansas City to points in northern Oklahoma with the present 100 per cent scale and the proposed rates for the same distances between Kansas and Oklahoma points on the first four classes:

	Distance.	Class 1.	Class 2.	Class 3.	Class 4.
<b>Kansas City to Miami, Okla.:</b>	<i>Miles.</i>				
Present rates (Frisco).....	173	\$0.98	\$0.77	\$0.69	\$0.535
Kansas-Oklahoma scale.....		1.105	.945	.77	.68
Proposed scale.....		1.235	1.045	.885	.765
<b>Kansas City to Dewey, Okla.:</b>					
Present rates (M., K. & T.).....	194	1.15	.985	.795	.61
<b>Kansas City to Vinita, Okla.:</b>					
Present rates (Frisco).....	199	1.18	.945	.845	.61
Kansas-Oklahoma scale.....		1.19	1.015	.835	.715
Proposed scale.....		1.305	1.105	.91	.77
<b>Kansas City to Wynona, Okla.:</b>					
Present rates (M., K. & T.).....	226	1.235	1.08	.965	.765
Kansas-Oklahoma scale.....		1.335	1.135	.93	.795
Proposed scale.....		1.405	1.19	.98	.865

	Distance.	Class 1.	Class 2.	Class 3.	Class 4.
Kansas City to Renfrow, Okla.:	<i>Miles.</i>				
Present rates (Rock Island).....	280	\$1.285	\$1.10	\$1.00	\$0.945
Kansas-Oklahoma scale.....		1.47	1.25	1.025	.88
Proposed scale.....		1.57	1.33	1.10	.945
Kansas City to Enid, Okla.:					
Present rates (Rock Island).....	320	1.45	1.27	1.15	1.045
Kansas-Oklahoma scale.....		1.58	1.335	1.105	.945
Proposed scale.....		1.675	1.42	1.175	1.005

It will be noted that the Oklahoma points shown in the above table are in the northern portion of the state. To points in southern Oklahoma the disparity would not be so marked.

Protestants representing the Kansas and Oklahoma jobbing points object to the application of the proposed scale between Kansas and Oklahoma unless the same scale is made applicable from Kansas City and other Missouri River points to interior Kansas and Oklahoma points. Intrastate in Kansas, distance rates are in effect which are lower than either the present or proposed rates between Kansas and Oklahoma; and specific rates are in effect from Missouri River points to points in southern Kansas and in northern Oklahoma on substantially the same basis as are the rates intrastate in Kansas. Prior to December 19, 1919, the jobbers' rates between Oklahoma and Kansas were on substantially the same basis as applied from Kansas City to Kansas and northern Oklahoma points and intrastate in Kansas and Oklahoma. As a result of the increases made on that date protestants contend that the Kansas-Oklahoma jobbing points were placed at a substantial disadvantage as compared with Kansas City, particularly in view of the fact that the inbound car-load rates from defined territories to Kansas City are substantially lower than the corresponding rates to the interior Kansas and Oklahoma points.

It clearly appears from the evidence presented that the present adjustments of class rates between points in Kansas and Oklahoma and from Kansas City to points in southern Kansas and Oklahoma are in a chaotic condition. It is conceded by all interested parties that the same scale of rates should apply in this territory. Under the present adjustment Kansas City has an advantage over Oklahoma jobbing points in both Oklahoma and Kansas, and Kansas jobbing points have an advantage over Oklahoma jobbing points within Kansas. These different bases result in undue preference of certain points and in undue prejudice to others. However, the tariffs under suspension will not correct the rate difficulties in this territory. The Oklahoma and Kansas jobbing points will be on a parity on interstate traffic and nonjobbing points in those states will be on the same basis, but some of the keenest competition that these job-

bing points have to meet is that of Kansas City, and to permit the proposed rates to become effective without corresponding increases from Kansas City to interior Kansas and Oklahoma points will give Kansas City a greater advantage in the distribution of commodities than it now enjoys. This would result in lower intrastate rates in Kansas and Oklahoma than the interstate scale proposed between Kansas and Texas, creating an adjustment preferential to intrastate traffic and prejudicial to interstate traffic.

We find that the proposed rates between Oklahoma and Kansas points and between Kansas and Texas points as presented in this project of readjustment have not been justified.

#### OKLAHOMA-TEXAS RATES.

Between points in Oklahoma and points in Texas common-point territory for 500 miles and less the Shreveport scale, approved by us in *Southwestern Class Case, supra*, is at present in effect. The same scale of distance rates applies intrastate in Texas common-point territory and from Shreveport, Ruston, Monroe, and Natchez to points in Texas common-point territory. This scale is the same as the Memphis-Southwestern scale for single-line application for 250 miles, and beyond that distance is lower than the Memphis-Southwestern scale. Respondents introduced an exhibit which shows the average increases that will result by the substitution of the proposed for the present scale between Oklahoma and Texas for five representative distances, in blocks of 50 miles, beginning at 300 miles over single lines, to be as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Increases, in cents.....	14	12	10	8	6	7	5	5	4	4

When it is considered that in this territory most less-than-carload traffic moves less than 250 miles and that practically all carload traffic moves at commodity rates lower than the lower class rates, it is evident that the increases proposed will not materially increase the carriers' revenue at this time.

In addition to the distance scale between Oklahoma and Texas, respondents also maintain certain overhead group rates. These group rates were established following our decision in *Southwestern Shippers Traffic Asso. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 570, where, inter alia, it was held that the class rates from Galveston, Tex., to Oklahoma City, Okla., should not exceed a scale beginning, first class with \$1.12, now \$1.69. The carriers divided Oklahoma into nine groups, designated "A" to "I," and Texas common-point territory into 14 groups, designated "1" to "14." Group A includes Oklahoma City and group 7 includes Galveston. Between these two

groups the \$1.12 scale was applied; between other groups the same or a higher scale was applied, and these scales, as increased under general order No. 28 and Ex Parte 74, are at present in effect. The percentage relationship of the classes applicable between these groups varies, and in no instance conforms to the percentage relationship under the present mileage scale. It is proposed to revise these overhead group rates so as to harmonize the percentage relationship of the classes with the percentage relationship of the classes under the proposed mileage scale with which the group rates alternate. This revision will result in increases in the rates on classes 1, 2, and 3, but will result in many reductions in the fourth-class rates, and all of the lower class rates applicable on carload traffic will be reduced.

Since these group rates will alternate with the distance scale, the lower applying, the increases thereunder in the higher classes resulting from harmonizing the percentage relationships of the classes will not seriously affect the shippers if the distance scale with which the group rates alternate is not unreasonable or otherwise unlawful. It appears, however, that the proposed revision of these group rates will result in rates between grouped points in Texas and grouped points in northern Oklahoma for distances over 500 miles, which will be higher than the rates from or to Kansas City territory, creating a departure from the fourth section. Respondents state, however, that the overhead group rates between northern Oklahoma groups and Texas groups will be revised so that the Kansas City group rate will be observed as a maximum to or from Oklahoma groups.

#### TEXAS-ARKANSAS RATES.

The present class rates between Texas common-point territory and Arkansas are also on group bases. Substantially the entire state of Arkansas is included within the Memphis or the Little Rock-Fort Smith groups with rates between those groups and Texas common-point territory made a definite relation to the rates to or from St. Louis territory. The St. Louis and Kansas City territories include a small portion of the northern part of the state. The same class rates apply from the St. Louis and Kansas City territories to Texas common points, except to the grouped points in northern and eastern Texas known as the Dallas-Fort Worth group, to which the rates from Kansas City territory are lower than from the St. Louis territory.

Respondents propose to establish the Memphis-Southwestern scale between points in Arkansas on and south of the Missouri Pacific Railroad from Memphis through Fair Oaks, Bald Knob, North Little Rock, and Van Buren to the Oklahoma state line on the one hand and

Texas common-point territory on the other for 500 miles. This will result in reductions between practically all points. The rates for the short distances will be reduced more than 50 per cent. For instance, the present first-class rate from Ashdown, Ark., to Paris, Tex., is 209.5 cents, while under the proposed scale it will be 94.5 cents.

The following table compares the present class rates to Texas common-point territory from Memphis territory and Little Rock-Fort Smith territory with rates under the proposed scale between representative points in those groups:

To Texas common points.	Classes.									
	1	2	3	4	5	A	B	C	D	E
From Memphis territory.....	231.5	194.5	162	150.5	118	121.5	110	90	69.5	57.5
Brinkley, Ark., to Mount Pleasant, Tex., 279.6 miles.....	157.5	133.5	110	94.5	75	81.5	63	54.5	47.5	40
Brinkley, Ark., to Waco, Tex., 477.3 miles.....	208	176	145	125	100	106	83	73	63	52.5
From Little Rock-Fort Smith territory.....	209.5	177.5	145	140.5	110	113.5	101.5	83	64	52.5
Camden, Ark., to Mount Pleasant, Tex., 142 miles.....	110	93	77	66	52.5	57.5	44	38	33	27
Pine Bluff, Ark., to Waco, Tex., 406.2 miles.....	192.5	164	135	115.5	92	100.5	77	67.5	57.5	48.5

The distance scale applicable over two or more lines would exceed the scales for the distances above shown by the amount of the joint-line differentials. In numerous instances the present class rates between Arkansas and Texas points exceed the aggregates of the intermediate rates to and from Texarkana or other points near the Arkansas-Texas state line. The proposed scale will correct these fourth section departures.

For many years Jonesboro, Ark., has been included within the Memphis territory with the same rates to Texas common points. It is stated that, by the withdrawal from this proceeding of the contemplated revision of the overhead group rates from Memphis and St. Louis territories to Texas common points, the proposed distance scale will not be applicable from Jonesboro, while it would apply from Memphis. This would have the effect of continuing the present group rates, beginning with 231.5 cents first class, from Jonesboro, while the first-class rate from many points in the Memphis group will be 208 cents. The St. Louis Southwestern Railway serves both Jonesboro and Texas common-point territory, and it was stated on behalf of that carrier, that the suspended tariffs would be revised so as to continue the same basis of rates from Jonesboro and Memphis. No explanation is made for not proposing the dis-

tance scale between all Arkansas points and Texas common points for 500 miles.

The Shreveport scale applies between Shreveport, Ruston, Monroe, and Natchez, on the one hand, and Texas common points on the other, and protestants in Arkansas, while advocating a uniform scale for application between Arkansas, Oklahoma, and Louisiana, and Texas common points, urge that the Shreveport scale, with certain readjusted percentage relationships between the classes, should be adopted instead of the higher Memphis-Southwestern scale.

BETWEEN TEXAS AND LOUISIANA, NATCHEZ, AND VICKSBURG.

Generally speaking, group class rates apply between points in Louisiana west of the Mississippi River and points in Texas. The rates from New Orleans and grouped points to the Texas common-point, Orange, Beaumont-Port Arthur, and Houston-Galveston groups appear to be the most important. Other group rates, lower than the New Orleans-Texas common-point scale, apply between points on certain railroads in the two states. In addition to the group rates there are also certain distance scales applying from points on certain railroads in one state to points on the same or other railroads in the other state. Respondents propose to cancel these group and distance rates, except the rate from New Orleans to Texas common points, and substitute therefor the Memphis-Southwestern scale.

It appears that by a proposed rearrangement of the joint-line differentials the Memphis-Southwestern scale will be lower for certain two-line hauls than the Shreveport scale, and by reason thereof it is proposed to publish the Memphis-Southwestern scale between Texas common points on the one hand and Ruston and Natchez on the other, to apply alternatively with the present rates, the lowest being applicable.

Many of the present rates are the same as the combinations of local rates to and from Beaumont, Houston, or Texarkana. As a result of our decision in *Chamber of Commerce, Houston, Tex.*, v. *I. & G. N. Ry. Co.*, 32 I. C. C., 247, and through agreement between the carriers and shippers the class rates from Houston to certain points in Louisiana on and north of the Texas & Pacific from the Texas-Louisiana state line to, but not including, New Orleans, have been on basis of the combination of locals to and from Shreveport, Alexandria, or New Orleans, with the New Orleans-Texas common-point rates observed as maxima.

The table below, compiled from respondents' exhibits, compares the present group rates with the proposed distance scales for the distance I. C. C.

tances shown from points in the New Orleans group and from Lake Charles, La., to points in Texas common-point territory:

	1	2	3	4	5	A	B	C	D	E
	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
New Orleans to Texas common points....	231.5	194.5	158.5	147	117	121.5	106	88	67.5	56
Proposed, 500 miles:										
Single line.....	208	176	145	125	100	106	83	73	63	52.5
Joint line.....	221.5	187.5	154.5	133	102.5	115	88.5	77.5	67	56
To Marshall, 309 miles:										
Single line.....	182.5	155.5	127.5	110	88	94.5	73	64	54.5	46
To Terrell, 435 miles:										
Single line.....	208	176	145	125	100	106	83	73	63	52.5
Vicksburg to—	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>
Paris, 335 miles.....	231.5	194.5	158.5	147	117	121.5	106	88	67.5	56
Ranger, 489 miles.....	185.5	157.5	130.5	111.5	89.5	97	75	64.5	55.5	47.5
Alexandria to—	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>	<i>Prop.</i>
Longview Junction, 188.5 miles,	221.5	187.5	154.5	133	105.5	115	88.5	77.5	67	56
<i>Pres.</i>	231.5	194.5	158.5	147	117	121	106	88	67.5	56
<i>Prop.</i>	127	108	88.5	76.5	61	66	50.5	44	38	31
Cisco, 459.9 miles.....	202.5	172	142	121.5	97	105.5	81	71	61	50.5
Lake Charles to—	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>	<i>Pres.</i>
Longview Junction, 284.5 miles,	185.5	164	133.5	128.5	101	108	94.5	76.5	58	44
<i>Prop.</i>	157.5	133	110	94.5	76	81.5	63	55	47	39.5
Dallas, 350.6 miles.....	177.5	151	124	105.5	85	92	71	63	53.5	44.5

Substantial reductions will result between all points in the New Orleans group including Vicksburg and points in the Texas common-point group for 500 miles and less for single-line hauls. However, between Louisiana points and points in southeastern Texas not included in Texas common-point territory with respect to traffic from New Orleans the proposed rates will result in both reductions and increases, the increases predominating. Respondents assert and protestants do not deny that the rates from New Orleans to points in the Orange, Beaumont-Port Arthur, and Galveston-Houston groups are and always have been depressed by reason of the actual or potential water competition on the Gulf of Mexico.

It is stated that such water competition ceased about 1910 or 1911 and that since that time there has been no necessity for the depressed rates. The present rates from New Orleans to points in southeastern Texas are lower than the rates to many intermediate points in Louisiana which has resulted in complaints from Lake Charles and other intermediate points. The record is not persuasive that the carriers should be required to continue a lower basis of class rates between New Orleans and points in the southeastern Texas groups than applies between New Orleans and other points in Texas exclusive of differential territory.

Protestants, without exception, advocate the use of a uniform distance scale of rates throughout the territory here under consideration, and with the exception of a few they agree that the same scale should also apply throughout the entire southwestern territory, south and west of Kansas City, St. Louis, and the Mississippi River. They argue that the Shreveport scale is more desir-

able, by reason of its present scope, than the higher Memphis-Southwestern scale. But, in this connection, they submit a substitute scale of distance rates generally slightly lower than either the Memphis-Southwestern scale or the Shreveport scale, particularly on the carload classes. The scale proposed by protestants will be considered more in detail later.

Protestants state generally that a scale for not exceeding 350 miles, with group rates based on a reasonable scale for greater distances, would be preferable in this territory to a straight distance scale for the distances proposed. Texas protestants advocate the maintenance of a lower scale of class rates from Arkansas, Memphis, and St. Louis to northeast Texas, including Fort Worth, Dallas, Waco, Corsicana, and other points than to the remainder of Texas common-point territory, and urge that the same rates should be applied under any scale to or from Fort Worth, Dallas, and Waco, which points, under the distance scales proposed by respondents and protestants, would take different rates by reason of the varying distances from New Orleans, Arkansas points, Memphis, and St. Louis. Protestants at New Orleans and southern Louisiana points particularly object to the establishment of the scale proposed by respondents or any other distance scale similar thereto between New Orleans and southern Louisiana points on the one hand, and the Orange, Beaumont-Port Arthur, and Houston-Galveston groups on the other.

Protestants point out many alleged inconsistencies that will result if the proposed tariffs become effective. No provision is made for the application of the proposed scale from New Orleans to the southeastern Texas groups to be used in connection with the Trans-Mississippi Terminal Railroad, one of the New Orleans terminal lines, but respondents assert that an appropriate tariff provision will be published to cover this situation and also to provide for the application of single-line rates in connection with that terminal line. Attention is also directed to the fact that the schedules in question provide that 20 miles will be added to the actual distances from or to the Mississippi River crossings, New Orleans, Baton Rouge, and Vicksburg, while at Natchez 20 miles is added to the distances to or from Vidalia, La., a point on the west bank on the Mississippi River opposite Natchez. Respondents admit that no justification exists for the maintenance of these different bases for the different river crossings and express a willingness to amend the tariffs by providing that the 20 miles for the river crossings will be added to the distances to and from the points on Mississippi River opposite New Orleans, Baton Rouge, and Vicksburg, the same as now applies at Natchez. Respondents state that it is intended to apply the proposed mileage



scale from and to points on the line of the Yazoo & Mississippi Valley Railroad and Louisiana Railway & Navigation Company between New Orleans and Baton Rouge on the one hand and Texas points. New Orleans protestants state that the tariff under suspension fails to effect this purpose and assert that the combination of local rates will apply from and to the points between New Orleans and Baton Rouge, but respondents assert that if such a condition does result it will be corrected so as to carry out the intention to apply the distance rates from or to such points.

Much of the evidence introduced by protestants was directed to the rates which it is anticipated will be published by respondents between Kansas City, St. Louis, and other Mississippi River crossings, on the one hand, and southwestern points, if the proposed mileage scale is approved in the territory here under consideration. While protestants may be seriously concerned in possible future action by respondents, the questions they raise are not before us in this proceeding.

That more uniformity should exist in the class rates in the southwestern territory is undisputed. The question is whether the Memphis-Southwestern scale herein proposed, the Shreveport scale, protestants' scale, or some other scale of class rates, should be applied. The Shreveport and Memphis-Southwestern scales are identical for single-line application for 250 miles and less, and it is quite apparent from the evidence in this case that very little traffic moves at the class rates for greater distances between interior points. The fact that the Shreveport scale is lower than the Memphis-Southwestern scale for the longer distance is due to the sharp break in the rate of progression at 250 miles. The first-class rate under the Shreveport scale for 240 miles is \$1.44 and at 250 miles \$1.47, or at a rate of progression of 3 cents for 10 miles and 30 cents per 100 miles, and this rate of progression applies for distances from 150 miles to 250 miles. Beyond 250 miles the rate of progression is about 8.5 cents for every 50 miles, or about 17 cents per 100 miles. This substantial decrease in the rate of progression affects the rates throughout the remainder of the scale and makes them lower than they would be if the decline in the rate of progression were more gradual. The rate of progression under the Memphis-Southwestern scale is the same as under the Shreveport scale for 250 miles; from 250 to 350 miles it is 30.5 cents, and from 350 miles to 500 miles it is about 10 cents for each 50 miles. The first, second, and third class rates under protestants' proposed scale are for distances up to 150 miles slightly higher and for distances from 150 to 250 miles somewhat lower than the Shreveport and Memphis-Southwestern scales. Beyond 250 miles on these classes protestants' scale is higher than the Shreveport scale and lower than the Memphis-Southwestern scale.

The percentage relationship of the classes under the Shreveport and Memphis-Southwestern scales is as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Percentages.....	100	85	70	60	48	52	40	35	30	25

Under protestants' proposed scale the percentage relationship is:

Classes.....	1	2	3	4	5	A	B	C	D	E
Percentages.....	100	85	70	55	40	45	35	30	25	20

This change in the percentage relation of the scales results in protestants' scale on the classes below third class being generally lower than the Shreveport and Memphis-Southwestern scales for practically all distances up to 250 miles, and beyond that distance it is materially lower than the Memphis-Southwestern scale.

The Memphis-Southwestern scale when promulgated, while affecting reductions in rates for the upper classes, made substantial increases in rates for the carload classes, due to the fact that the percentages for the carload classes in the Shreveport scale and the Memphis-Southwestern scale are higher than many of those which had prevailed previous thereto in the southwest.

In our report in *Memphis-Southwestern Investigation*, we said:

There is a marked difference between the southwestern territory and western trunk line territory with respect to the movement of commodities on carload class rates. The southwestern carriers have hitherto published relatively high class rates for the carload classes and have made commodity rates to move the traffic, hence little traffic moves in that section on carload class rates. In western trunk line territory, with relatively lower carload class rates, commodity rates are less frequently employed, and there is a heavy movement of traffic on the carload class rates. The last preceding table indicates that the percentages for the lettered classes are generally lower in the territory north of the Missouri River than in the southwest.

The readjustment of the percentage relationship between the classes which is proposed by protestants would probably tend to produce a scale of class rates under which some of the carload traffic now moving at commodity rates could be handled, and thereby eliminate some of the present commodity rates and change the lower class rates from merely paper rates to rates under which some traffic would move.

We incline to the view that the percentage relationship of the carload classes might properly be lower if all scales in this territory were correspondingly revised. However, if such a revision were put into effect in that part of the territory here under consideration it would result in introducing another scale substantially different from any heretofore prescribed, and instead of simplifying and harmonizing the class rates would further complicate the situation.

The rate of progression of about 20 cents per 100 miles for distances over 350 miles proposed by respondents is compared by them with an average rate of progression of about 33 cents per 100 miles for distances from 300 miles to 800 miles from St. Louis to points in Kansas and Nebraska, where the traffic density is shown to be higher than in the southwest. In the Missouri River-Nebraska scale prescribed by us in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, the rate of progression for distances beyond 250 miles was 1.5 cents for each 10 miles, or 15 cents per 100 miles. If the rate of progression employed in that case increased under general order No. 28 and Ex Parte 74 were employed in the Shreveport scale for distances beyond 250 miles, the rates would be substantially higher.

Upon consideration of all the facts and circumstances presented in this proceeding, we are of the opinion that the scale of class rates herein proposed for single-line application in the territory here under consideration, except those proposed between points in Kansas and points in Oklahoma and Texas, will be a step in the proper direction toward harmonizing the class-rate structure in this territory. This scale, which is the Memphis-Southwestern scale as increased under Ex Parte 74, is shown in the appendix.

In connection with the Shreveport scale prescribed by us in the cases hereinbefore referred to, we said that the differentials to be applied on shipments over two or more lines of railroad not under the same management or control should not exceed the following amounts in cents on the class indicated:

Classes.....	1	2	3	4	5	A	B	C	D	E
Differentials.....	8	7	6	5	4	4	4	3	2	2

This scale of differentials was increased 25 per cent under general order No. 28, and again increased 35 per cent under Ex Parte 74. We authorized the same maximum joint-line differentials under the Memphis-Southwestern scale but specifically said that the 25 per cent increase should not be added. These differentials were increased 35 per cent under Ex Parte 74. The present joint-line differentials in connection with the Memphis-Southwestern scale are thus lower than the differentials used in connection with the Shreveport scale. The present differentials applicable in connection with each of these scales and the differentials herein proposed by respondents are as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Shreveport scale.....	13.5	12	11	8	7	7	7	5.5	4	4
Memphis-Southwestern scale..	11	9.5	8	7	5.5	5.5	5.5	4	2.5	2.5
Proposed scale.....	13.5	11.5	9.5	8	6.5	7	5.5	4.5	4	3.5

The proposed differentials are based on 13.5 cents first-class, in effect under the Shreveport scale, with the remaining differentials

bearing the same percentage relation to the first-class differential that the lower class rates bear to the first-class rate in the scale. It will be seen that the proposed differentials are not the same as under either of the scales heretofore prescribed by us. They are higher than those used in connection with the Memphis-Southwestern scale and slightly lower than those used in connection with the Shreveport and allied scales. Respondents assert that the scale proposed will not produce sufficient revenue to cover the additional costs for transfer between two or more lines. It is stated that at numerous points in southwestern territory the carriers do not have joint facilities for interchanging less-than-carload traffic; that the interchange services are performed by transfer companies; and that the charges for the transfer services are in many cases in excess of the joint-line differentials. It is shown that at a number of representative points in Kansas, Oklahoma, and Texas the transfer charges between depots of the Atchison, Topeka & Santa Fe, and other carriers, range from 4 cents to 10 cents per 100 pounds, with minimum charges of from 25 to 30 cents per shipment. No evidence was presented as to the expense of interchanging less-than-carload freight between stations on other lines, or of interchanging carload freight at any point. To approve the proposed scale of differentials for use in connection with the Memphis-Southwestern scale in the territory here under consideration would have the effect of projecting into the southwestern territory a scale of joint-line rates different from any at present in effect and would result in three different bases of joint-line rates in this territory where it is earnestly urged by all interested parties, including respondents, that the scales should be the same.

We find that the proposed joint-line differentials used in connection with the scale of class rates herein approved has not been justified, but we will authorize the publication of the same scale of joint-line differentials in connection with these rates as was approved by us in *Memphis-Southwestern Investigation*, as increased under Ex Parte 74, and shown in the appendix of this report.

There was also assigned for hearing in connection with this proceeding fourth section application No. 11761 of F. A. Leland, agent, by which authority is sought on behalf of respondents to apply over all routes the lowest distance class rates applicable via any route from any point of origin to any point of destination in the territory here under consideration and also between points in Arkansas and Missouri on the one hand and Oklahoma on the other for distances from 350 miles to 600 miles, and to maintain higher rates from, to, or between intermediate points when the intermediate rates are

based upon the distance scales here under suspension. The relief requested is similar to that granted in connection with the distance scales prescribed between points in Oklahoma and points in Texas in *Southwestern Class Case*, *supra*, and in *Memphis-Southwestern Investigation*, for distances not exceeding 350 miles between points in Arkansas and southern Missouri and points in Oklahoma. As previously stated, the Memphis-Southwestern scale has been extended to 600 miles between points in southern Missouri and Arkansas and points in Oklahoma. In connection with the rates for these longer distances we denied the carriers the full fourth section relief here sought and the rates applicable for those distances are determined by the route over which the shipments move.

Since the decisions in the *Southwestern Class Case* and *Memphis-Southwestern Investigation*, the fourth section has been amended to provide that—

\* \* \* If a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of a petitioning line or route is not longer than that of a direct line or route between the competitive points.

It is urged that a part of the authority here requested is not sought "because of such circuitry" but by reason of different circumstances and conditions—that is, a joint-line route meeting the rate of a single line—and under established practices in the application of distance scales; also, to protect the two-line differentials over joint lines and the distance scale over any line. With this contention we can not agree. The fourth section relief sought will be granted, with the proviso that the authority shall not extend to intermediate points as to which the hauls of the indirect lines are not longer than those of the direct lines or routes between the competitive points, and provided further that the rates from, to, or between said intermediate points shall in no case exceed the lowest combinations.

The application of the distance scale herein approved between points in Arkansas and Louisiana, on the one hand, and points in Texas common-point territory for 500 miles and the maintenance of the present group rates beyond will result in abrupt breaks between the last point to which the distance scale applies and the points immediately beyond to which the present Texas common-point group rates apply. For instance, the single-line rate for 500 miles under the scale is \$2.08, first class, while the present first-class rate from both the Memphis and New Orleans territories to Texas common points is \$2.315, or a difference of 23.5 cents. The difference between the distance scale and the group rates on some of the other

classes is so much that the combination of local rates composed of a distance scale for a maximum haul plus the local rate beyond will cut the group rates for as much as 50 or more miles in certain instances. Respondents suggest that this difficulty may be overcome by increasing the rate of progression for the last 100 or 150 miles, so as to merge the distance rates into the group rates without abrupt breaks. This is objected to by protestants. Apparently the better plan would be to extend the distance scale for such distances beyond 500 miles at the same rate of progression observed between 400 and 500 miles as would be necessary to merge the distance rates into the group rates. This may result in disturbing the present southwestern adjustment from defined territories through some of the Mississippi River crossings and probably will necessitate some provision for the regrouping of points in Texas. However, if it is found by the carriers that to extend the scale beyond 500 miles, so as to merge with the Texas common-point group rates, would result in materially affecting the revenues of the southwestern carriers, they should work out and submit to us a plan by which the difficulties encountered might be overcome.

Respondents will be required to cancel the tariffs under suspension, without prejudice to filing new tariffs in accordance with our views herein, to become effective on not less than 15 days' notice.

DANIELS, *Commissioner*, concurring in part:

The foregoing report in general has my concurrence. The disposition of the fourth section application, however, appears to me unfortunate, and—so far as it may appear to be based on the amended fourth section—erroneous.

The relief from the general provisions of the fourth section which the statute authorizes the Commission to grant is restricted by only three explicit prohibitions. We may not permit the establishment of any charge not reasonably compensatory. We may not grant relief on account of merely potential water competition. Nor, where a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, may we authorize higher rates at intermediate points for hauls of lesser distance than that of the direct line or route between the competitive points.

Subject to these three limitations, our power to grant relief, upon a proper showing, is not limited. It may be granted even to the short line, and in certain instances, where we have prescribed distance scales and joint-line differentials, relief is now accorded that in certain instances may actually accrue to the short line.

The recent amendment to the fourth section covers relief granted to a circuitous rail line or route because of such circuitry. The approval of joint-line differentials in the instant case is clearly accorded because of presumably greater costs involved in the transfer of freight from one carrier to another in the joint route. Thus we expressly approve a higher class rate for 100 miles over a joint route than over a single-line route for the same distance. If the two routes should converge at origin and destination, can it be said that the higher costs on the joint line disappear? And if we deny the carriers forming the joint route the right to meet at the point of convergence the lower rate over the single line, we thereby compel them to forego competing for the competitive traffic, unless they choose to accept the lower rate of the single line not only for the 100-mile haul but also for lesser hauls to, from, and between intermediate points, depressing a scale of rates we find not unjust or unreasonable.

To a situation of this kind the section covering relief because of circuitry does not, in my judgment, apply. The basis for relief is not distance at all, but a special cost not dependent on or attributable to distance traversed.

It is also to be noted that not only the carriers, but the protesting shippers in the instant case, without exception, ask that relief of the character sought should be granted. If, for example, between two points, A and B, there are two routes of exactly the same length, one a joint route and the other a single-line route, a shipper who has freight destined in part to an intermediate point on the joint line and in part to the common terminus can not deliver the entire consignment to the joint route over which the freight to the intermediate point must move. But having delivered to the joint route that part of the freight destined to the intermediate point thereon, he must dray or carry the remainder to the single-line carrier which alone affords the lowest rate to the destination point reached by both lines. Between points in the territory in which this scale of rates was prescribed in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, the carriers were accorded the same relief which is sought in the instant case without any other limitation than that they should not charge rates at intermediate points in excess of those named in the scale. While it is true that this relief was granted prior to the amendment effected by the transportation act, this relief has never been modified and is still in force. It is, in my judgment, an unfortunate construction of the fourth section which issues in a denial of relief sought by shipper and carrier alike.

COMMISSIONERS HALL, ATTCHISON, and POTTER did not participate in the disposition of this case.

## APPENDIX.

Maximum scale for single-line application approved for the southwest as provided in this report. (See note.) Rates are in cents per 100 pounds.

Distance.	1	2	3	4	5	A	B	C	D	E
5 miles and less.....	39	32.5	27	23.5	17	17	13.5	12	10	9
10 miles and over 5.....	39	32.5	27	23.5	17	17	13.5	12	10	9
15 miles and over 10.....	42.5	36	29.5	25.5	19	20.5	15.5	13.5	12	10
20 miles and over 15.....	46	39	32.5	27	20.5	22.5	17	14.5	13.5	10
25 miles and over 20.....	49.5	42.5	34	29	23.5	25.5	19.5	17	14	12
30 miles and over 25.....	51.5	44	36	30.5	25.5	27	20.5	19	15.5	13
35 miles and over 30.....	54	46	37	32.5	26.5	27.5	22.5	19	16	13.5
40 miles and over 35.....	56.5	48	40	34	27	29	23	19.5	17	14
45 miles and over 40.....	59.5	50	41	36	29	30.5	23.5	20.5	17.5	15.5
50 miles and over 45.....	61.5	52.5	43	37	29.5	31	24.5	21	19	15.5
55 miles and over 50.....	64	54	44.5	39	30.5	32.5	25.5	22.5	19.5	16
60 miles and over 55.....	67	56.5	46.5	40.5	32.5	34.5	27	23	20.5	17
65 miles and over 60.....	69.5	59.5	48	41	33	36	27.5	23.5	21	17
70 miles and over 65.....	71.5	61	50	43	34	37	29	24.5	22.5	17.5
75 miles and over 70.....	74.5	63.5	52.5	44.5	36	39	29.5	26.5	22.5	19
80 miles and over 75.....	77	65	54	46.5	37	40	30.5	27	23	19.5
85 miles and over 80.....	79.5	67.5	56	47.5	38	41	32.5	27.5	23.5	20.5
90 miles and over 85.....	81.5	69.5	57.5	49.5	39	42.5	33	29	24.5	20.5
95 miles and over 90.....	84.5	71.5	59.5	50.5	40.5	44	34	30.5	25.5	21
100 miles and over 95.....	87	73.5	61	52.5	41	46	34.5	30.5	26.5	22.5
105 miles and over 100.....	90	76.5	63	54	43	46.5	36	31	27	23.5
110 miles and over 105.....	92	77.5	64	54.5	44	47.5	37	32.5	27.5	24
115 miles and over 110.....	94.5	80.5	66	56.5	46	49.5	38	33	29	25.5
120 miles and over 115.....	97	81.5	67.5	58	46.5	50.5	39	34	29	26.5
125 miles and over 120.....	100	84.5	69.5	60	48	51.5	40	34.5	29.5	27.5
130 miles and over 125.....	102	87	71.5	61.5	49.5	53.5	40.5	36	30.5	28.5
135 miles and over 130.....	104.5	90	73.5	63	50.5	54	42.5	36.5	31	29.5
140 miles and over 135.....	107.5	91	75	64	51.5	56	43	37	32.5	30
145 miles and over 140.....	110	93	77	66	52.5	57.5	44	38	33	31
150 miles and over 145.....	112	95	78.5	67.5	54	59.5	44.5	39	34	32
155 miles and over 150.....	117	98.5	81	70	56	61	46.5	40.5	34.5	29.5
160 miles and over 160.....	120	101.5	82.5	71.5	57.5	63	48	41	36.5	30.5
165 miles and over 165.....	123.5	104.5	85.5	74.5	59.5	64	49.5	43	37	31
170 miles and over 170.....	127	108	88.5	76.5	61	66	50.5	44	38	31
175 miles and over 175.....	130.5	110.5	91	77.5	63	67.5	52.5	46	39	32.5
180 miles and over 180.....	133.5	113.5	94	80.5	64	69.5	53.5	47.5	40	33
185 miles and over 185.....	137	115.5	96	81.5	66	71	54.5	48	41	34
190 miles and over 190.....	140.5	119	98	84.5	67.5	73	56	49.5	42.5	34.5
195 miles and over 195.....	144	121.5	100.5	86.5	69.5	74.5	57.5	50.5	43	36
200 miles and over 200.....	147	125	108.5	88	71	76.5	59.5	51.5	44	36.5
205 miles and over 205.....	150.5	127.5	106.5	90.5	71.5	78.5	60	52.5	44.5	38
210 miles and over 210.....	157.5	133.5	110	94.5	75	81.5	63	54.5	47.5	40
215 miles and over 215.....	162	137.5	113.5	97	77.5	84.5	65	56.5	49.5	40.5
220 miles and over 220.....	167.5	142	117.5	100.5	80.5	87	67	58	50	42.5
225 miles and over 225.....	172	146	121	103.5	83	90	69.5	60	51.5	43
230 miles and over 230.....	177.5	151	124	106.5	85	92	71	63	53.5	44.5
235 miles and over 235.....	182.5	155.5	127.5	110	88	94.5	73	64	54.5	46
240 miles and over 240.....	187.5	159.5	131	112	90.5	97	75	66	56.5	47.5
245 miles and over 245.....	192.5	164	135	115.5	92	100.5	77	67.5	57.5	48
250 miles and over 250.....	198	168	138.5	118	94.5	103.5	79.5	69.5	59.5	50
255 miles and over 255.....	202.5	172	142	121.5	97	106.5	81	71	61	50.5
260 miles and over 260.....	208	176	146	125	100	108	83	73	63	52.5
265 miles and over 265.....	212.5	181	148.5	127.5	102	110.5	85	74.5	64	53.5
270 miles and over 270.....	218	185	152.5	131	104.5	113.5	87	76.5	66	54.5
275 miles and over 275.....	223	189	156	133.5	107.5	115.5	89	77.5	67	56
280 miles and over 280.....	228	194.5	159.5	137	110	118	91	80.5	69	57.5

NOTE.—Arbitraries for extra line hauls<sup>1</sup>.

Class.....	1	2	3	4	5	A	B	C	D	E
Cents.....	11	9.5	8	7	5.5	5.5	5.5	4	2.5	2.5

<sup>1</sup> To apply only when the lines embraced in the route are not under a common ownership and control.



No. 11467.<sup>1</sup>

SWIFT & COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted January 19, 1921. Decided June 23, 1921.*

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Rates on ice, in carloads, between points in western territory, and from St. Louis to Chicago found unreasonable. Reparation awarded.

*R. D. Rynder, Paul E. Blanchard, J. P. Haynes, and Wilkerson, Cassels, Potter & Gilbert* for complainants.

*O. W. Dynes, A. H. Lossow, L. H. Strasser, F. G. Dorety, R. J. Hagman, and C. Frankenger* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

These cases present similar issues and will be consolidated for disposition. Exceptions were filed by defendant to the reports proposed by the examiners, and certain of the cases were orally argued.

Complainants, corporations engaged in the meat industry, and in the buying and selling of ice, allege that the rates charged by defendant on numerous shipments of ice, in carloads, during the period February 1 to August 8, 1919, between points in western trunk line territory, state and interstate, and between St. Louis or East St. Louis and Chicago were unjust and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over defendant's lines, and the statement below, taken from exhibits of record, shows the points of origin and destination and other details.

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<sup>1</sup> This report also embraces No. 11540, Armour & Company v. Same; No. 11642, Cudahy Packing Company v. Same; No. 11521, Swift & Company v. Same; and No. 11499, Consumers Ice Company v. Same.

From—	To—	Distance.	Number of lines.	Rates charged.	Rates effective after shipment.
<i>No. 11487, 11540, and 11648.</i>					
Hopkins, Minn.....	Chicago, Ill.....	<i>Miles.</i> 423	1 or 2	<i>Cons.</i> 16.5	<i>Cons.</i> 12.5
Waconia, Minn.....	do.....	438	1 or 2	17.5	14
Hopkins, Minn.....	South Omaha, Nebr.....	342	2	20	11
Cardigan Junction, Minn.....	Chicago, Ill.....	443	2	16.5	14
Do.....	Burnham, Ill.....	443	2	16.5	14
Do.....	South Omaha, Nebr.....	374	2	20	12.5
Do.....	Memphis, Nebr.....	389	2	24	12.5
Chippewa Falls, Wis.....	Burnham, Ill.....	350	2	12.5	11
Do.....	Silver Lake, Wis.....	390	1	14	10
Stillwater, Minn.....	South Omaha, Nebr.....	386	2	20	12.5
Do.....	Memphis, Nebr.....	401	2	24	14
Do.....	Burnham, Ill.....	383	2	16.5	12.5
Do.....	Sioux City, Iowa.....	286	1	14	10
Hudson, Wis.....	do.....	286	1 or 2	14	10
Lake Crystal, Minn.....	do.....	170	1	10.5	7.5
St. Paul, Minn.....	do.....	267	1	14	10
White Bear, Minn.....	do.....	277	2	17.5	10
North Platte, Nebr.....	Memphis, Nebr.....	280	2	17	10
Valentine, Nebr.....	South Omaha, Nebr.....	306	2	17	11
Watertown, S. Dak.....	Ashland, Nebr.....	371.5	2 or 3	22.5	12
Arnold's Park, Iowa.....	do.....	226	2	18	10
Kampeska, S. Dak.....	Sioux City, Iowa.....	203	2	18	10
Do.....	do.....	226.5	2	18	10
<i>No. 11681.</i>					
St. Louis, Mo.....	Chicago, Ill.....	283.5	1	10.5	8
Do.....	do.....	283.5	1	12.5	8
<i>No. 11489.</i>					
Spicer, Minn.....	Sioux City, Iowa.....	235	1	11.5	9
Do.....	Walthill, Nebr.....	262	2	20	10
Do.....	Allen, Nebr.....	267	2	17.5	10
Do.....	Waterbury, Nebr.....	284	2	26	10
Do.....	Homer, Nebr.....	280	2	20	9
Do.....	Orchard, Nebr.....	343	2	29.5	11
Do.....	Rosalia, Nebr.....	292	2	17.5	10
Do.....	Dakota City, Nebr.....	248	2	20	9
Do.....	Osmond, Nebr.....	309	2	28	11
Do.....	Jackson, Nebr.....	249	2	17.5	9
Do.....	Winnebago, Nebr.....	286	2	18	10
Do.....	Wausa, Nebr.....	315	2	18.5	11
Do.....	Obert, Nebr.....	282	2	17	10
Do.....	Magnet, Nebr.....	310	2	22	11
Do.....	Fordyce, Nebr.....	314	2	18.5	11
Do.....	Thurston, Nebr.....	370	2	19.5	10
Do.....	Elk Point, S. Dak.....	245	2	16	10
Do.....	Ute, Iowa.....	291	2	17.5	10
Do.....	Marcus, Iowa.....	241	2	15	9
Do.....	Oleghorn, Iowa.....	246	2	17	9
Do.....	Meriden, Iowa.....	250	2	20	9
Do.....	Moivre, Iowa.....	261	2	17	10
Do.....	Bronson, Iowa.....	249	2	17	9
St. James, Minn.....	Sioux City, Iowa.....	147.7	1	10	7
Currie, Minn.....	do.....	164.6	1	10.5	7.5
Hudson, Wis.....	do.....	285.6	1	14	10
Stillwater, Minn.....	Emerson, Nebr.....	315	1	20	11
Stillwater, Minn.....	Coleridge, Nebr.....	225.9	1	19	9
Currie, Minn.....	Lemars, Iowa.....	139.4	1	9.5	7

\* Effective June 10, 1919, expired Sept. 30, 1919.

\* Rate applicable was 28 cents, a combination of commodity rates.

\* Rate applicable was 28 cents, a combination of distance commodity rates to Sioux City and class E beyond.

\* Overcharge.

\* Plus switching charge of \$5 per car applicable from Kampeska to Watertown on sand, gravel, and ice.

\* Average distance.

\* Reference to St. Louis includes East St. Louis, Ill.

\* Exceeds combination on Sioux City.

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**NOTE.**—The rates charged on the shipments involved in Nos. 11467, 11540, and 11642, except those indicated by reference marks, were class-E or commodity rates the same as class-E rates. The distances given vary with the route of movement and are not correct in all instances. Likewise the rates which became effective subsequent to the movements may be varied dependent upon the number of lines participating in the hauls and what were the short routes. The rate charged on the shipments in No. 11521 was a specific commodity rate 2 cents lower than the class-E rate. The class-E rate was assessed on a few shipments. In No. 11499 distance commodity rates, or combination of distance, commodity, and class-E rates were assessed.

The unusually mild winter of 1918-19 prevented the formation of natural ice of the necessary thickness near complainants' ice plants at Chicago, South Omaha, Sioux City, or at storage plants situated on bodies of water at Hammond and Stillwell, Ind., Kansasville, Silver Lake, and Burlington, Wis., Wolf Lake, Ill., and Memphis and Ashland, Nebr. The necessity of obtaining ice elsewhere became apparent, but class rates applied from points where ice had formed or where it was purchased, except as hereinbefore stated. Ice, loose or in packages, carload minimum 40,000 pounds, was rated class E in western classification and sixth class in official classification.

#### NOS. 11467, 11640, AND 11642.

The approximately 1,800 shipments involved in these cases moved between February 1 and March 22 and between June 1 and August 8, 1919. Early in February, 1919, application was made to the proper traffic committee for the publication of commodity rates, and on March 15, 1919, a scale of local, joint, state, and interstate distance rates was published, effective March 22, 1919, on ice, carloads, minimum 5,000 pounds less than marked capacity of car, but not less than 50,000 pounds, applicable between points in Illinois, Iowa, Kansas, Michigan (upper peninsula), Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin, for single-line, two-line, and three-line hauls. This scale will be herein referred to as the ice scale, and rates made by its application are stated as "Rates effective after shipment" in the above table. The rates for single-line hauls up to 100 miles began at 5 cents; increased 1 cent for each 25 miles to 150 miles; 0.5 cent for each 25 miles to 250 miles; 1 cent for each 50 miles to 350 miles; and 1.5 cents for each 50 miles to 600 miles, reaching 18.5 cents for that distance. For the shorter distances up to 200 miles the arbitraries for two-line over a one-line and for three-line over two-line hauls was 1 cent. For distance of 200 and up to 250 the arbitrary for two-line over one-line hauls was 0.5 cent, and for three-line over two-line hauls 1 cent. For distances of 250 miles and in excess thereof no arbitrary was provided for two-line over one-line hauls, but 1 cent was provided for that distance and those in excess thereof for three-line over two-line hauls. The tariff limited the rates to May 31, 1919, unless changed, canceled, or extended. Prior to the expiration of the schedule complainants and other shippers

requested the continuance of the rates for the movement of ice in storage, but the schedule was permitted to expire, with the assurance that rates based on the scale would be made effective whenever a movement was contemplated or took place. Such rates were established, but not until after some of the shipments involved had moved.

The rate of 10.5 cents from Lake Crystal to Sioux City, 170 miles, yielded 80.9 cents per car-mile, based on the average loading of 50,069 pounds. The rate of 20 cents from Hopkins to South Omaha, 342 miles, yielded 44.11 cents per car-mile, based on the average loading of 75,424 pounds.

The following statement shows the car-mile earnings on ice, in carloads, based upon the average loading of 62,479 pounds, of Swift & Company's shipments derived from rates in cents per 100 pounds under the ice scale:

Distance.	Single-line hauls.		Two-line hauls.		Three-line hauls.	
	Rates.	Car-mile earnings.	Rates.	Car-mile earnings.	Rates.	Car-mile earnings.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
175 miles.....	7.5	20.7	8.5	30.3	9.5	33.9
250 miles.....	9	22.4	9	22.4	10	24.9
300 miles.....	10	20.8	10	20.8	11	22.9
350 miles.....	11	19.6	11	19.6	12	21.4
400 miles.....	12.5	19.5	12.5	19.5	13.5	31
450 miles.....	14	19.4	14	19.4	15	20.8

From March 8 to 14, 1919, Armour & Company shipped 185 cars. Of these, 48 were shipped on March 10 from Chippewa Falls to Silver Lake, 290 miles, at a rate of 14 cents, yielding 9.6 mills per ton-mile, and 28.46 cents per car-mile, based on the average weight of 58,927 pounds. The rate of 10 cents under the distance scale would yield 6.9 mills per ton-mile and 20.3 cents per car-mile.

In western territory, in central territory, and generally, ice is moved at commodity rates lower than the class rates applicable from and to the same points. Complainants show that the ice rates ranged from 75.7 per cent down to 44.5 per cent of the class-E rates, to indicate that they harmonized with contemporaneous commodity rates. From 87 points in Wisconsin, Michigan, and Nebraska to Chicago, for distances ranging from 75 to 532 miles, commodity rates were maintained at the time the shipments herein moved. The commodity rate in one instance was 53.3 per cent of the class rate; in another, 64.5 per cent. The ice scale was on the same basis or coincided, for the shorter distances with commodity rates on ice which were published by the Chicago, Milwaukee & St. Paul and the Chicago & North Western, and which were extended in the agency tariff for the longer distances here considered.

Complainant contrasts the rates charged from Hopkins to Omaha and Chicago with rates from and to the same points on brick, other than bath or enameled, sand, clay, ground limestone, drain tile, building stone, asphalt blocks, and other commodities, which, in some form, are rated class E, and which are said to be of greater value than ice. The ice comprising these shipments was purchased f. o. b. shipping point at prices ranging from 75 cents to \$1 per net ton. The lowest rates cited are those on clay and sand, 10 cents; the highest on ground limestone, 13.5 cents, yielded respectively 5 and 7.9 mills. The rate of 20 cents charged on ice from Hopkins to Omaha, yielded 11.7 mills; the rate of 16.5 cents from Hopkins to Chicago, yielded 8.3 mills.

Other comparisons show that the rates charged from Hopkins and Waconia to Chicago, and from Arnold's Park and Watertown to Ashland, are higher and that the subsequently established ice scale rates are higher or not lower than rates for comparable distances from Toledo, Ohio, and Clark's Lake, Mich., to various points in Indiana, Illinois, Missouri, Ohio, Pennsylvania, and New York. From Chippewa Falls to Silver Lake, 290 miles, the rate charged was 14 cents, the rate under the ice scale was 10 cents whereas rates of 9.5 cents were in effect from Clark's Lake, Mich., to Massillon, Canton, and Alliance, Ohio, for distances of 272, 280, and 299 miles, respectively. The rate of 12 cents from Clark's Lake to Buffalo, N. Y., 530 miles, was much lower than the rate of 17 cents under the ice scale for 550 miles.

Defendant compares the class-E rates charged with class-E rates in western territory and other territories and with class-E rates prescribed by us. There is no attack here on the class-E rates as such; merely their application to ice under the circumstances detailed. Defendant also compares the rates of the ice scale with ice rates in other territories, with rates on grain, tankage, dried blood, iron scrap, glue stock, hide trimmings and hoofs, paper scrap, hard coal, wood plastering fiber, dried earth paint, barytes, whiting, coke, ground iron ore, excelsior, and wood pulp, none of which, except tankage and dried blood, is rated as low as ice. The value of many of these commodities is greatly in excess of the value of ice.

Complainants point out that we have uniformly held that ice rates should be relatively low; that the ice scale was established after investigation by the western freight traffic committee; that the minimum provided increased the carriers' car earnings so that in some instances they exceeded those applicable under the class-E rate coupled with its minimum; that commodity rates need not be restricted to points from and to which there is a regular movement and that reasonable and temporary rates were established to move a large unusual, and specific crop of ice for which no appropriate

rates existed. A subsequent reduction of the rates is not necessarily an admission of the unreasonableness and raises no presumption of the unreasonableness of the former rates. But here this particular rate situation was investigated, and in consequence the Director General established rates for longer distances which conformed to those already in effect for less distances in the same territory, and after their expiration reestablished them where any need was shown. These facts have weight in determining whether the class rates charged were unreasonable. The reasonableness of commodity rates is not dependent solely upon regularity of movement.

NO. 11521.

The 622 carloads involved in this docket moved between March 29 and July 27, 1919. While a commodity rate of 10.5 cents was legally applicable to these shipments, a commodity rate of 8 cents was contemporaneously in effect in the reverse direction, viz, from Chicago to St. Louis. On March 28, 1919, complainant asked defendant to apply the southbound rate to the northbound movement, as an emergency measure. Effective July 28, 1919, the 8-cent rate was established. Meanwhile the shipments had moved and complainant here seeks retroactive application of the 8-cent rate, which remained in effect northbound until, on December 31, 1919, the 10.5-cent rate was reestablished. The rate southbound remained at 8 cents.

Complainant contrasts ton-mile earnings on ice between various points in central territory for distances ranging from 194 to 488 miles with the earnings which would have accrued on its shipments at the 8-cent rate. The ton-mile earnings from and to the selected points range from 4.41 to 6.18 mills, with an average of 5.41 mills, as compared with 5.63 mills under the 8-cent rate. Defendant points out that there is little or no movement between many of the points used in the comparison.

Exhibits of record compare the percentage relationship of the 8-cent rate to the class-E rate from St. Louis to Chicago with the average percentage relationship of commodity rates on ice to class rates to Chicago, mainly from points in Wisconsin, for comparable distances. The 8-cent rate was shown to be 64 per cent of the class-E rate as compared with an average of 62.4 per cent in the rates with which it was contrasted. A similar comparison of rates from points in Michigan, Indiana, and Ohio to Chicago, and from Chicago to points in Indiana and Ohio, showed that the commodity rates were an average of 55.6 per cent of the sixth-class rates.

Ton-mile and car-mile earnings, St. Louis to Chicago, under the rates applicable and sought, respectively, were also compared with earnings under the ice scale initiated through the Director General

for single-line hauls in western trunk line territory, where rates are usually higher as follows:

	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings. <sup>1</sup>
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
At rate charged.....	284	10.5	7.39	22.3
At rate sought.....	284	8	5.63	17.7
Under ice scale.....	251-300	10	6.06	21
Do.....	284	10	7.04	22.2

<sup>1</sup> Based on average weight, 64,092 pounds.

The 8-cent rate from Chicago to St. Louis was published to induce a movement of natural ice from harvesting points in Illinois and Wisconsin to St. Louis and East St. Louis. Defendant contends that the rate charged was not unreasonable, and in support thereof compares it with commodity rates on ice to Chicago from 12 representative points, of which the following table is illustrative:

To Chicago from—	Distance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
St. Louis, Mo.....	284	10.5	7.39
Cincinnati, Ohio.....	284	11.5	8.09
Detroit, Mich.....	283	10	7.07
Evansville, Ind.....	286	11.5	8.04
Louisville, Ky.....	311	13	8.36
La Crosse, Wis.....	263	12.5	9.59
Summit Lake, Wis.....	286	10.5	7.34

There is little or no movement of ice to Chicago from the points named except the Wisconsin points. Complainant claims that the rates from the Wisconsin points were superseded by the ice scale referred to and are 10 cents in both instances. That scale applied only in lieu of class or distance rates in tariffs making reference to the ice-scale tariff; and it did not take precedence over specific commodity rates. The rates of 12.5 and 10.5 cents from the two Wisconsin points were specific commodity rates.

NO. 11499.

The shipments in this case, 384 in number, moved between February 20 and March 22, 1919. On February 14, 1919, application was made to officials of the defendant for rates which would permit the movement of ice from Minnesota and Wisconsin lakes to Sioux City and near-by destinations. Effective March 22, 1919, or about five weeks after the request was made, the ice scale heretofore referred to was published, and that is the scale contended for by complainant. This scale of rates expired May 31, 1919. By this time,

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however, the need for any rates had nearly passed, as practically the whole movement had taken place.

The rates charged yielded car-mile earnings ranging from 27.6 cents, for 235 miles over the Great Northern from Spicer to Sioux City, to 58.21 cents, for 226.9 miles over the Omaha from Currie to Coleridge, Nebr. The ton-mile earnings ranged from 9.8 mills to 18.12 mills for distances ranging from 139 to 343 miles. Under the ice scale ton-mile earnings of from 6.4 to 10 mills would result.

The earnings per ton-mile and per car-mile on these shipments as shown by the record exceeded the average earnings on all traffic of the respective carriers over whose lines the shipments moved. Other exhibits show that the average earnings on all traffic on each of the defendant lines in the states where any portion of the movement occurred were generally less than the earnings on the shipments here considered. Defendant contends that it is entitled to earnings on ice higher than the average earnings on all commodities; that 51 per cent of all traffic on the North Western in 1917 was considered of lower grade than ice and that from 60 to 62 per cent of all carload traffic handled was as low or of lower grade than ice. The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings of the carriers on all traffic. If this were true the inevitable result would be to bring all rates to a common level.

It appears from this record that the density of traffic over the Great Northern in Minnesota and Iowa, in which states the entire haul was performed by that line, except where it touches one point in South Dakota for a few miles, is the heaviest of any states in which it operates; that the haul from Spicer to Sioux City was over the most favorable portion of the line, through a practically level section, where the cost of building and maintenance of way are comparatively low; that the haul is on the direct pathway of the heavy tonnage of coal moving from the head of the great lakes to this territory and of the heavy movement of grain northward from this territory to the east, through Duluth; that the Omaha is the short line from Omaha, Nebr., through Sioux City to Duluth, and is a heavy live stock, grain, and coal carrying road, and that operating conditions are as favorable as on the lines of any carrier in the northwest.

Exhibits of record show rates on brick, sand, gravel, and crushed stone which apply between the points of origin and destination. The rates on these commodities were lower and yielded ton-mile earnings generally less than those resulting from the rates on ice. The value of ice ranges from 60 to 90 cents a ton as compared with \$6.25 to \$8 a ton for brick; 60 to 80 cents per ton for sand and gravel; and \$2 a ton for crushed rock. There is a shrinkage of 50



per cent in the volume of ice between the time of harvesting and the time of consumption, which does not occur with the other articles mentioned. The value of this comparison is impaired by the fact that none of the commodities actually move between the points in question. It is admitted that if there was a movement of brick, sand, and gravel or crushed stone from Spicer, the rates applied would be lower than the rates charged on ice. The average haul of sand and gravel on the North Western is 67 miles, while the actual distances which the ice moved were from 235 to more than 300 miles.

Rates on ice from Wisconsin and Michigan points to Chicago were shown by complainant to be lower for substantially similar distances than the rates assailed. Defendant stated that there was no normal movement under the rates cited; that those origin points are in a territory of great traffic density; and that practically the entire ice supply for Chicago under normal conditions moves in train-load lots, for an average haul of from 54 to 57 miles.

We find that the rates assailed were in each case unreasonable to the extent that they exceeded the rates established March 22, 1919, in agent Boyd's tariff I. C. C. No. A-980 for like distances. We further find that the complainants made the shipments as described; that they paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

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No. 11854.  
**BIRMINGHAM PACKING COMPANY**  
*v.*  
**NEW ORLEANS & NORTHEASTERN RAILROAD**  
**COMPANY ET AL.**

*Submitted April 28, 1921. Decided July 1, 1921.*

Rate on cattle and hogs, in carloads, from New Orleans and Port Chalmette (or Chalmette), La., to Birmingham, Ala., found unreasonable. Reparation awarded.

*J. D. Patterson, jr., B. K. Fisk, and R. L. Lange* for complainant.  
*H. L. Walker* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.**

**BY DIVISION 3:**

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, is engaged in the meat-packing business at Birmingham, Ala. By complaint, as amended, it alleges that the rate charged on 25 carloads of cattle and hogs shipped in 1916 and 1917 from New Orleans and Port Chalmette (or Chalmette), La., to Birmingham was unreasonable to the extent that it exceeded \$68 per car. We are asked to award reparation and establish a reasonable rate for the future.

The shipments moved over the New Orleans & Northeastern to Meridian, Miss., and the Alabama Great Southern beyond. Freight charges were collected in the sum of \$1,925 at the applicable rate of \$77 per car.

Port Chalmette is a suburb of New Orleans and is accorded New Orleans rates. Complainant relies upon *Alabama Packing Co. v. A. G. S. R. R. Co.*, 48 I. C. C., 596, decided February 8, 1918, to which it and the defendants were parties. We found in that case that the rate on hogs and cattle, in carloads, of \$77 per car from New Orleans to Birmingham by way of Meridian, was, and for the future would be, unreasonable to the extent that it exceeded \$68 per car, and awarded reparation to that basis. As a general revision of the rates on live stock in the southeast was then under consideration no order for the future was entered but the defendants therein were advised

to realign their rates in accordance with our findings. This the Louisville & Nashville did on July 1, 1919, but it was not until after the hearing herein, or on April 1, 1921, that defendants reduced their rate to the basis found reasonable. No evidence differing from that considered in that case was here submitted by defendants.

Following the case cited, we find that the rate assailed was unreasonable to the extent that it exceeded \$68 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation from the New Orleans & Northeastern and the Alabama Great Southern railroads in the sum of \$225, with interest. No order for the future is necessary.

An order awarding reparation will be entered.

62 I. C. C.

No. 11978.

BARRETT &amp; ZIMMERMAN

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY.

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Submitted April 23, 1921. Decided July 1, 1921.

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Rate and classification rating on steel horse collars from Davenport, Iowa, and Rock Island, Ill., to Minnesota Transfer, Minn., found not unreasonable. Complaint dismissed.

*Leonard Brisley* for complainant.

*Thomas M. Woodward, Robert W. Fyfe, and W. E. Prendergast* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are John D. Barrett and Moses Zimmerman, co-partners engaged in buying and selling horses and mules, harness, and other accessories incidental to their business, under the firm name of Barrett & Zimmerman, at St. Paul, Minn. They allege that the first-class any-quantity rate of 75 cents per 100 pounds, governed by western classification, assessed on three carloads of steel horse collars in boxes from Davenport, Iowa, in March, April, and May, 1919, and on a carload from Rock Island, Ill., in June, 1919, to Minnesota Transfer, Minn., over the Chicago, Rock Island & Pacific, was unreasonable to the extent that it exceeded the class-A rate of 31.5 cents contemporaneously applicable on iron hames, in carloads, minimum 30,000 pounds. We are asked to award reparation. On April 1, 1921, subsequent to the hearing, an any-quantity rating of second class on steel horse collars, in boxes or crates, was established in western classification territory, thereby effecting uniformity in rating throughout the country.

The collars shipped were surplus army equipment purchased by complainants from the government and from the Davenport Iron & Metal Company at an average price of between 40 and 45 cents each. Some were sold at from \$2.50 to \$4.50 per pair. Collars of this type

are not manufactured in appreciable quantities for commercial use and their principal use in the past has been in the artillery service of the army. Apparently no previous carload shipments of this character had been made, and no request for a carload rating was made prior to this movement.

Complainants compare the rating assailed with ratings of fourth class on cloth-covered collars, in carloads, minimum 20,000 pounds, and of first class on leather collars, any quantity. Both of the latter commodities may be shipped in bags, as well as in boxes and crates. No rating is provided for steel horse collars in bags. The prewar factory price of iron hames was about \$8.90 per dozen pairs and of cloth-covered collars \$4.50 per dozen. The value of leather collars is estimated at from \$8 to \$75 each. There is a considerable carload movement of both iron hames and cloth-covered collars, but no carload movement of leather collars.

In *Wyeth Hardware & Mfg. Co. v. A., T. & S. F. Ry. Co.*, 39 I. C. C., 697, on a showing of little, if any, movement of harness and saddlery, boxed, in carloads, we declined to condemn the any-quantity ratings of first class in official and western classification territories and second class in southern territory.

At the hearing complainants asked for the establishment of classification ratings on steel horse collars, in bags. While that feature is not strictly within the issues, it is suggested that ratings be established for application on these collars, when shipped in bags, no higher than the ratings contemporaneously applied on horse collars, n. o. i. b. n., in bags.

We find that the rate and classification rating assailed were not unreasonable. The complaint will be dismissed.

No. 11918.<sup>1</sup>

E. I. DU PONT DE NEMOURS &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA  
RAILROAD COMPANY, ET AL.

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*Submitted April 23, 1921. Decided July 1, 1921.*

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Rates on sulphuric and muriatic acids, in tank-car loads or in carboys, in carloads, from Jersey City, Newark, and Bayway, N. J., to Gibbstown and Carney's Point, N. J., during federal control, found unreasonable. Reparation awarded.

*Harvey S. Farrow* for complainant.*Adams Dodson* and *Henry Wolf Birké* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chemical products at various New Jersey points, alleges that the rates charged by defendants on certain carloads of sulphuric and muriatic acids shipped during the period from June 29, 1918, to February 27, 1920, both inclusive, from Newark and Bayway, N. J., to Carney's Point and Gibbstown, N. J., and from West Side Avenue, Jersey City, N. J., to Gibbstown, were unjust and unreasonable. Reparation is asked. Rates will be stated in cents per 100 pounds.

The shipments aggregated 151 carloads, 89 of sulphuric acid which moved from Newark to Carney's Point, 111 miles, and 4 from Newark to Gibbstown, 97.5 miles, by the Pennsylvania; 48 from Jersey City to Gibbstown, 113.5 miles, by the Central of New Jersey, Pennsylvania, and West Jersey & Seashore; and 10 carloads of muriatic acid from Bayway, 18 miles southwest of Jersey City, to Carney's Point, 118 miles by the last-named route. Gibbstown and Carney's Point are 8 and 22 miles, respectively, southwest of Camden, N. J. The acid in 11 cars was in drums or carboys. The remainder moved in tank cars. The movement was plant to plant. Acid loads heavily,

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<sup>1</sup> This report also embraces No. 11918 (Sub-No. 1), Same v. Director General, as Agent.

averaging about 97,300 pounds per car. The rates charged were the applicable fifth-class rates of 21.5 cents from Newark and Bayway to Carney's Point and Gibbstown, and 18 cents from Jersey City to Gibbstown. The earnings were 36.4 to 44.1 mills per ton-mile and \$1.77 to \$2.15 per car-mile at the 21.5-cent rate and 31.7 mills per ton-mile and \$1.54 per car-mile at the 18-cent rate.

Complainant contends that the rates charged were excessive to the extent that they exceeded 15 cents, and instances hauls for like distances at that rate from many other New Jersey points of origin in the same rate group to Wilmington, Del., Marcus Hook, Trainer, and Primos, Pa., and Baltimore, Md. These five points are in a common destination group taking a rate 1 cent in excess of the 14-cent rate on sulphuric acid, in tank-car loads, from Perth Amboy, N. J., to Philadelphia, Pa., prescribed in *Du Pont de Nemours & Co. v. Director General*, 55 I. C. C., 151. The carriers made the 14-cent rate applicable also to Camden, which takes Philadelphia rates on this traffic. Perth Amboy is in a common origin group with Newark, Bayonne, and Jersey City. Complainant further contends that Carney's Point and Gibbstown, just across the Delaware River in New Jersey, logically belong in the Wilmington group and were entitled to the 15-cent rate.

A 22.5-cent rate was contemporaneously applicable from many New Jersey points to Norfolk, Acca, and Richmond, Va., for distances of approximately 350 miles, and an 18-cent rate from the same points of origin to Harrisburg, Steelton, and Lebanon, Pa., for distances approximating 180 to 210 miles. The 15-cent rate yields earnings of about 25 mills per ton-mile and \$1.20 per car-mile, except the rate to Baltimore, which would yield approximately 60 per cent of the earnings stated. The rate sought would have yielded 25 to 30.8 mills per ton-mile and \$1.24 to \$1.50 per car-mile, at the average loading mentioned above. There is a substantial movement of acid to Carney's Point and Gibbstown.

Defendants state that no application had ever been made for lower rates on this traffic; that the movement was intermittent; and that under the circumstances the fifth-class rates applied were not unreasonable.

We find that the rates charged were unreasonable to the extent that they exceeded 15 cents per 100 pounds; that complainant made the shipments described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 10698.<sup>1</sup>  
PUBLIC SERVICE COMMISSION OF OREGON  
v.  
DIRECTOR GENERAL, OREGON - WASHINGTON RAIL-  
ROAD & NAVIGATION COMPANY, ET AL.

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*Submitted April 17, 1920. Decided July 12, 1921.*

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Upon further consideration of the record herein, order entered giving effect to the conclusions reached in the original report, 59 I. C. C., 321.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

**EASTMAN, Commissioner:**

These cases were consolidated for hearing and were included in one report, *Inland Empire Shippers League v. Director General*, 59 I. C. C., 321. The issues presented were summarized as follows, at page 322.

In No. 10698 the Public Service Commission of Oregon complains that class and commodity rates between Portland and points in Idaho, Oregon, and Washington, within the Columbia River basin, as described in the complaint, fail to reflect Portland's natural and geographical advantages because they are the same as the corresponding rates between the Columbia River basin and certain seaports in Washington, namely, Seattle and Tacoma on Puget Sound and, in some instances, Everett, Bellingham, and Olympia on Puget Sound, South Bend on Willapa Bay, and Hoquiam and Aberdeen on Gray's Harbor, and that said rates between Portland and the Columbia River basin are unjust and unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. The complaint in No. 10458, by the Commission of Public Docks of the City of Portland, is similar, except that Astoria is named as a port which is preferred and in Washington only the ports of Seattle and Tacoma are named.

By a petition of intervention similar allegations were made with respect to the rates between Vancouver and the Columbia River basin.

A third case, No. 10448, *Inland Empire Shippers League v. Director General*, was also covered by the original report, but the complaint in that case was dismissed and will not be further considered.

The rates attacked were partly interstate and partly intrastate and had been initiated by the President. The complaints were

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<sup>1</sup> This report includes No. 10458, Commission of Public Docks of the City of Portland, Oreg., et al., v. Director General, Spokane, Portland & Seattle Railway Company, et al. 62 I. C. C.



brought and the cases were heard during the period of federal control, when both of these classes of rates were subject to our jurisdiction under section 10 of the federal control act. The cases were decided, however, on November 5, 1920, after the period of federal control. The complaints clearly alleged that the rates between the Columbia River basin, described on page 323 of the original report, and Portland, Oreg., and Vancouver, Wash., whether interstate or intrastate, were unduly prejudicial to Portland and Vancouver; and also that the rates between said Columbia River basin and certain seaports in Washington, namely, Seattle and Tacoma on Puget Sound and, in some instances, Everett, Bellingham, and Olympia on Puget Sound, South Bend on Willapa Bay, and Hoquiam and Aberdeen on Gray's harbor, and between said Columbia River basin and Astoria, Oreg., whether interstate or intrastate, were unduly preferential of such seaports in Washington and of Astoria. The states of Oregon, Washington, and Idaho were represented at the hearing by their public service commissions.

The facts are fully stated in our original report, which is hereby referred to and made a part hereof. After discussing the situation at length we said, at page 345:

We find, therefore, that the rates on grain and grain products, in carloads, from points in Idaho, eastern Oregon, and eastern Washington on the lines of the Oregon-Washington, Oregon Short Line, and Camas Prairie Railroad, to Portland, Astoria, and intermediate points on the lower Willamette and Columbia rivers in Oregon and to Vancouver, and the rates on classes and commodities between Portland and Vancouver, on the one hand, and points in the Columbia River basin, as defined herein, on the other, are not unreasonable; that the rates on classes and commodities between points in said Columbia River basin north of the Snake River, on the one hand, and Portland and Vancouver, on the other, have not been shown to be unjustly discriminatory or unduly prejudicial, as compared with the rates contemporaneously in effect between the said Columbia River basin points, on the one hand, and Seattle, Tacoma, and Astoria or other ports on Puget Sound, Gray's Harbor, or Willapa Bay, on the other; but that the rates for interstate application on classes and commodities between points in said Columbia River basin south of the Snake River, on the one hand, and Portland and Vancouver, on the other, are unduly prejudicial to Portland and Vancouver in so far as they exceed 90 per cent of the rates contemporaneously applied on like traffic between said Columbia River basin points, on the one hand, and Astoria, Seattle, or Tacoma or points on Gray's Harbor and Willapa Bay, on the other. Except as stated below, no order will be entered for the present, but defendants will be expected to file within 90 days from the service of this report rates revised in accordance with this finding. While we do not find that the rates in question are now unreasonable, our recommendation is that this revision be accomplished by reducing the rates to and from Portland and Vancouver and by raising the rates to and from the other ports by approximately equal amounts.

Rates according with the above findings and recommendation and applying both interstate and intrastate within Oregon and Wash-

ington were filed by defendant carriers to become effective July 1, 1921, and they have become effective interstate, and intrastate within the state of Oregon. By order of the Department of Public Works of Washington, however, the rates for intrastate application within the state of Washington were suspended for a period of 90 days beginning July 1, 1921.

In view of these facts and upon further consideration of the record, we are of opinion and find (a) that the interstate class rates between Portland and Vancouver, on the one hand, and points within the state of Washington in the Columbia River basin south of the Snake River, as defined in the original report, on the other, and the interstate rates on grain and grain products, in carloads, from such points south of the Snake River to Portland and Vancouver, in effect on July 1, 1921, are and will be just and reasonable rates; (b) that the relation existing between such rates and the corresponding rates on like traffic for intrastate application between Seattle, Tacoma, South Bend, Hoquiam, and Aberdeen, Wash., on the one hand, and such points in the Columbia River basin south of the Snake River, on the other, results and will result in undue prejudice to Portland and Vancouver, and in undue preference of the other ports named; and (c) that such undue prejudice and undue preference can and should be removed by increasing the rates for intrastate application mentioned in clause (b) so that they shall not be less than 11 per cent in excess of the corresponding rates mentioned in clause (a) contemporaneously maintained on like traffic.

We further find, upon consideration of the record, that the relationship existing at the date of our original report between the class and commodity rates between points in the Columbia River basin south of the Snake River and Portland and Vancouver, on the one hand, and the corresponding rates between said points and Spokane, Wash., on the other hand, was not unduly prejudicial or unduly preferential, or otherwise unlawful.

In order to prevent confusion and to insure the execution of these findings, an appropriate order will be entered.

COMMISSIONERS ATTCHISON and CAMPBELL did not participate in the disposition of this case.

No. 10741.

## CEDAR RAPIDS GAS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

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Submitted October 14, 1920. Decided July 7, 1921.

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Rates for the transportation of bituminous coal, in carloads, from Jenkins and McRoberts, Ky., to Cedar Rapids, Iowa, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*J. H. Henderson and H. F. Sundberg* for complainant.

*A. P. Humburg, Edward D. Mohr, and J. S. Patterson* for defendants.

*A. P. Humburg, John F. Finerty, and Alex. M. Bull* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiner, and oral argument has been had. We have reached conclusions differing from those recommended by the examiner.

Complainant, a corporation engaged in the manufacture and sale of gas, coke, and other by-products of coal at Cedar Rapids, Iowa, alleges that the combination rates on bituminous coal to Cedar Rapids from mines in eastern Kentucky, particularly from Jenkins and McRoberts, were and are in violation of the first four sections of the act to regulate commerce. We are asked to award reparation and to establish joint through rates. Except as noted, rates are stated herein in amounts per net ton and do not include the general increases of 1920.

Cedar Rapids is in eastern Iowa, 59 miles from Muscatine, 74 miles from Davenport, and 81 miles from Clinton, Mississippi River points in Iowa through which the coal passes. It is 250 miles south of St. Paul, Minn., and 70 miles east of Marshalltown, Iowa, and is intermediate to those cities via certain routes hereinafter described. Jenkins is on the Sandy Valley & Elkhorn, 28.6 miles from Shelby, Ky., the junction between that road and the Chesapeake & Ohio. McRoberts is the eastern terminus of the Kentucky division of the Louisville & Nashville.

Complainant shipped 40 carloads from McRoberts and 103 carloads from Jenkins between July 1, 1917, and June 24, 1918; and between June 25, 1918, and September 1, 1919, it shipped 34 and 67 carloads from the respective points of origin. The shipments from Jenkins after reaching Shelby moved over the Chesapeake & Ohio to Cincinnati, 263.7 miles. The shipments from McRoberts moved over the Louisville & Nashville to Cincinnati, 269 miles. Beyond Cincinnati the routing from both points of origin was over various lines to Chicago, short-line distance 285.3 miles, or to Peoria and other gateways.

The combination rates applicable to Cedar Rapids from McRoberts, which is representative of the points of origin, and the combination rates in effect prior to the movement varied according to the gateways on which they were based as shown in the following table:

From McRoberts—	Gateway.			
	Chicago.	East Mississippi River crossings.	Muscatine.	Davenport.
<b>Sept. 1, 1916:</b>				
To gateway.....	\$1.90	\$2.35	\$2.85	\$2.85
Beyond gateway.....	1.60	1.15	1.74	1.85
Through rate.....	3.50	3.50	3.59	3.70
<b>July 1, 1917; increase of 15 cents in each factor:</b>				
To gateway.....	2.05	2.50	3.00	3.00
Beyond gateway.....	1.75	1.30	1.89	1.00
Through rate.....	3.80	3.80	3.89	4.00
<b>June 25, 1918:</b>				
To gateway.....	2.45	2.95	3.50	3.59
Beyond gateway.....	2.15	1.70	1.10	1.80
Through rate.....	4.60	4.65	4.60	4.80

<sup>1</sup> Iowa interstate distance rates.

<sup>2</sup> Via the Chicago, Rock Island & Pacific, \$4.45 after Apr. 30, 1919.

On June 25, 1918, the rate from McRoberts to Clinton was \$3.50. From that date until November 16, 1918, when a minimum class-D rate of 6.5 cents per 100 pounds became effective, the class-D rate of 4.5 cents per 100 pounds, equal to 90 cents per net ton, applied from beyond Clinton to Cedar Rapids over the Chicago & North Western on traffic originating at McRoberts. The combinations were applicable on traffic via the Chicago & North Western and shipments so moved and charged higher rates were overcharged. All such outstanding overcharges should be promptly refunded with interest.

On July 1, 1917, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, both factors of the combination in effect prior to that date were increased 15 cents, an aggregate increase of 30 cents; and on June 25, 1918, following general order No. 28 of the Director General of Railroads, both factors were again increased 40 62 I. C. C.

cents, or a total of 80 cents. The increase provided in general order No. 28 for the volume of the rates beyond Chicago and gateways in northern Illinois was 30 cents, but 10 cents was added thereto under the proviso in that order to the effect that when groups were related by fixed differentials the increase applicable from the highest rated group should be applied from all groups. Apparently the increase applicable from the Springfield group in Illinois was applied to the factors assailed beyond the gateways.

The present rates from McRoberts and from other mines on the Louisville & Nashville in eastern Kentucky to Cedar Rapids are alleged to be in violation of the long-and-short-haul provision of section 4 of the act in that the rates to Cedar Rapids are higher than the rates via the Chicago & North Western through that city to Marshalltown and via the Chicago, Rock Island & Pacific through that city to St. Paul. No application for relief from the operation of the fourth section was assigned for hearing in connection with this complaint, such violations, if existing, having developed subsequent to August 17, 1910, the effective date of the amended fourth section.

At the time of movement complainant produced coal gas, but since November 1, 1919, it has produced carbureted water gas, the product of coke, petroleum gas oil, and steam coal. Such coal is not obtained from points in eastern Kentucky. Des Moines, Ottumwa, and Davenport, Iowa, also produce gas by the carbureted water method. The price of gas distributed by complainant is regulated by ordinance of the local council. The increases in freight rates effective July 1, 1917, were absorbed by complainant. Early in 1918 complainant, anticipating that the increases in coal rates then contemplated would be added but once to the combination rates instead of to each factor, applied to the council for an increase in the price of gas of from 90 cents to \$1.05 per 1,000 feet, which was granted. The allegations of discrimination and undue prejudice are based on the assertion that the council compares the service charges permitted by authorities of other cities in Iowa in determining the service charges of complainant, and therefore a low transportation cost of coal to such cities might operate to complainant's disadvantage.

No serious complaint is made against the factors of the rates assailed from points of origin to Chicago and the other gateways, the attack being directed principally against the factors west of the gateways.

The factors of the rates assailed west of Chicago and Peoria, namely, \$1.75, prior to June 25, 1918, and \$2.15 thereafter, were found not unreasonable, unjustly discriminatory, or unduly prejudicial in *Cedar Rapids Chamber of Commerce v. Director General*,

59 I. C. C., 624, decided after the argument in the present case. In the latter decision, however, we did not pass upon the rates from the Mississippi River to Cedar Rapids.

In *Interior Iowa Cities Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and *Interior Iowa Cases*, 46 I. C. C., 89, we prescribed rates from the west bank of the Mississippi River to interior Iowa cities made by grading back from the Missouri River certain rates between the rivers which we had previously prescribed. Following that decision Cedar Rapids has been granted many class and commodity rates which are approximately 30 per cent of the proportional rates from the Mississippi to the Missouri River. The proportional rate on bituminous coal between the rivers is \$2.45, and 30 per cent of that amount would be 73.5 cents. The present rates on coal from the Mississippi River to Cedar Rapids are higher than rates on asphalt, brick, paving material, tar and pitch, sulphate of iron, scrap iron, and certain other commodities. There is no showing of substantial competition between Cedar Rapids and Missouri River cities.

The following statement shows the through combination rates from McRoberts to Cedar Rapids in effect at the time of movement and prior thereto, and certain joint rates hereinafter described maintained by the Louisville & Nashville from the same point of origin to destinations named on the Wabash and Minneapolis & St. Louis railways:

McRoberts to—	Sept. 1, 1916.	July 1, 1917.	June 25, 1918.
Cedar Rapids, Iowa.....	\$3.40-\$3.50	\$3.80-\$4.00	\$4.45-\$4.60
Marshalltown, Iowa.....	2.40	2.65	4.20
Ottumwa, Iowa.....	2.15	2.30	3.80
Des Moines, Iowa.....	2.25	2.50	3.90
Fort Dodge, Kans.....	2.75	2.90	4.40
Mason City, Iowa.....	2.40	2.65	4.20
Omaha, Nebr.....	2.90	4.05	4.60
St. Paul, Minn.....	2.40	2.55	4.05

Such relationships between the above points of destination as existed on September 1, 1916, have been disturbed by the varying amounts in which the respective rates have been increased since that date. The difference in the amounts of the respective increases is due largely to the fact that the general increases of July 1, 1917, and June 25, 1918, were applied separately to the factors of the through rates to Cedar Rapids and only once to the joint rates applying over certain routes to the other destinations. The joint rates, however, were not increased by uniform amounts. If any definite relationships in rates to these destinations have existed in the past, it is apparent that no serious attempt has been made to preserve them.

No line, serving the so-called crescent groups extending from Pennsylvania to Tennessee, other than the Louisville & Nashville, maintains joint rates on coal to points west of the west bank of the Mississippi River. About 10 years ago the Louisville & Nashville established joint rates based on the then existing combinations to equalize rates via gateways not served by certain delivering carriers. One of them, the Minneapolis & St. Louis, serves Peoria but not Chicago. As stated in *Coal from Kentucky, Tennessee, and Virginia*, 60 I. C. C., 166, 175, the comparatively limited extent to which the Louisville & Nashville has departed from the combination basis "is indicated by the fact that of 8,666 points served by steam railroads in northwestern territory, exclusive of northern Illinois, it maintains joint rates to only 588, or 6.8 per cent, distributed as follows: Iowa, 294; Nebraska, 2; Minnesota, 71; Wisconsin, 71; North Dakota, 34; Missouri, 116." The destinations to which the Louisville & Nashville maintains joint rates, except those in northern Illinois, are located principally on the Minneapolis & St. Louis and on the Wabash.

Tariffs proposing the cancellation of these joint rates have been filed from time to time, but for various reasons they have not been permitted to become effective. In September, 1919, the director of traffic of the United States Railroad Administration approved an application to cancel the rates, but the application involved a general readjustment and was not acted upon prior to the termination of federal control. In *Coal from Kentucky, Tennessee, and Virginia, supra*, we denied an increase in these joint rates proposed by the Louisville & Nashville, and said that under normal conditions of coal and car supply it might be reasonable to conclude that comparatively little coal would move from mines in the crescent groups on basis of combination rates, in view of the competition with coal from Illinois and other less distant mining districts. In *Elmore-Benjamin Coal Co. v. C. & O. Ry. Co.*, 36 I. C. C., 528, we denied a request for joint rates from the Kanawha and New River districts to Milwaukee, Wis., and found the combination rates based on Chicago not unreasonable. With respect to the establishment of joint rates we said: "In the final analysis the determination of that question rests upon the reasonableness of the through charges now in effect."

The short-line distance from Jenkins to Chicago is 579.4 miles; the average short-route distance from all coal-shipping points in the inner crescent group, including Jenkins, to Chicago is 513 miles; the short-line distance from Jenkins to Cedar Rapids is 798.2 miles; The minimum and maximum distances from group-4 mines on the Louisville & Nashville, which include McRoberts, to Chicago

are, respectively, 552 and 641 miles and to Cedar Rapids, respectively 810 and 899 miles. Complainant shows the short-line distance from Jenkins to Cedar Rapids as 781 miles; from McRoberts, 745 miles and the average distance from Jenkins as 809 miles and from McRoberts 797 miles. The minimum distance of 810 miles from group-4 mines on the Louisville & Nashville via Cincinnati, the Chesapeake & Ohio of Indiana to Chicago, and the Chicago & North Western beyond, is sufficiently representative for the purpose of this case. Computed on this mileage the through rate of \$4.45 assailed earns 5.5 mills per ton-mile and the rate of \$4.60 assailed earns 5.68 mills. Complainant compares these earnings with those derived from rates from mines in Illinois and Indiana to points in Iowa, Minnesota, South Dakota, and Nebraska for distances ranging from 752 miles, 5.02 mills, to 910 miles, 3.89 mills. Defendants contend that the latter rates are depressed by competition of coal from the docks. To 88 points in Iowa to which rates are made on the combination basis from group-4 mines on the Louisville & Nashville, 754 to 1,008 miles, the ton-mile earnings range from 6.03 to 5.38 mills. None of these rates are lower than the rate of \$4.45 to Cedar Rapids. The latter rate is applicable to Cedar Falls, 884 miles, to Waterloo, 827 miles, and to Vinton, Iowa, 809 miles.

The Louisville & Nashville introduced numerous exhibits contrasting the rates attacked with those applicable for similar distances from the head of the lakes and St. Paul to North Dakota, South Dakota, Minnesota, and Nebraska; from Chicago and mining points in Illinois to various western cities; from mines on the lines of southern carriers to points in Florida; from mines on the Baltimore & Ohio and the Pennsylvania to destinations in Maine, New Hampshire, Vermont, and Canada; together with rates fixed by us from the Utah, Arizona, Colorado, and Wyoming coal fields to various interstate destinations. Practically all of the great number of exhibited rates are equal to or higher than the highest rates to Cedar Rapids.

We have repeatedly held that the lawfulness of rates can not be determined entirely by a construction of general order No. 28. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 57 I. C. C., 739. The preceding tables, and statements of rates and distances disclose that the factors west of the gateways are on higher bases than are the factors up to the gateways. Nevertheless, complainant's real concern is with the through rates. Measured by ton-mile earnings, and by the bulk of coal rates in evidence, the rates assailed were not and are not unreasonable for the transportation service rendered, and we so find.



As stated in *Cedar Rapids Chamber of Commerce v. Director General, supra*, page 625, with respect to coal from northern Illinois, Cedar Rapids, as a destination point, is in the southern part of the so-called St. Paul territory. This territory, to which the St. Paul rates are observed at maxima from northern Illinois, lies east of the line of the Minneapolis & St. Louis and extends from St. Paul on the north to Oskaloosa, Iowa, on the south and to the Mississippi River on the east. The influence of the rates to St. Paul upon rates to intermediate territory in northern and eastern Iowa is obvious. However, the maintenance to Marshalltown and St. Paul on coal moving through Cedar Rapids of rates lower than the rates in effect to the latter city was and is unauthorized, and this and any other fourth section violations must be promptly removed. No damage to complainant having been shown to have resulted, there is no basis for reparation because of the violations of section 4. *Iten Biscuit Co. v. C., B. & Q. R. R. Co.*, 50 I. C. C., 724; 58 I. C. C., 729.

There is no satisfactory proof of the alleged violations of sections 2 and 3 of the act. There is a maladjustment in the relationships between the combination rates to Cedar Rapids and the joint rates maintained by the Louisville & Nashville to certain other cities in Iowa. Furthermore, the combinations based on the Mississippi River do not conform to the principle announced in the *Interior Iowa Cases, supra*. The present record does not afford a basis for determining the exact relationships between points of destination which should have existed in the past, nor those which should be prescribed for the future. However, we adhere to our former opinion expressed in the reports in the *Interior Iowa Cases, supra*, that the commodity rates as well as the class rates from the Mississippi River to interior Iowa cities should be graded back equitably in relation to those applying to the Missouri River cities. If this is not done, our attention may be directed to the matter in an appropriate proceeding, whereupon such further action will be taken as may seem proper in all the circumstances.

An order dismissing the complaint will be entered.

CHAIRMAN CLARK and COMMISSIONER EASTMAN dissent.

62 I. C. C.

No. 11154.

## SLIGO IRON STORE COMPANY

v.

WESTERN MARYLAND RAILWAY COMPANY, DIRECTOR  
GENERAL, AS AGENT, ET AL.

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Submitted October 26, 1920. Decided June 23, 1921.

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Shipment of coal from Coketon, W. Va., to Lamar, Colo., found to have been overcharged. Reparation awarded.

*Carl Hirdler* and *R. W. Ropiequet* for complainant.

*James M. Chaney* for defendants.

*John F. Finerty* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

## By DIVISION 1:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by defendants, and the case was orally argued before us.

Complainant, a Missouri corporation, by complaint alleges that the charges collected for the transportation of one carload of prepared fine smithing coal shipped from Coketon, W. Va., to Lamar, Colo., February 3, 1919, were unjust and unreasonable. We are asked to award reparation only, including an amount to cover alleged excess war taxes paid. Rates will be stated in amounts per net ton.

The shipment weighed 102,000 pounds, and charges were collected in the sum of \$450.81 at a rate of \$9.20. There was no joint through rate in effect. The defendants state that a combination rate of \$8.70 was legally applicable and that the shipment was overcharged accordingly. Complainant, while agreeing that the shipment was overcharged, contends that a combination rate of \$8 was legally applicable. The following table shows the different factors of the combination rate in effect on June 24, 1918, and the factors used by the defendants in arriving at the rate of \$8.70:

	Rate June 24, 1918.	Rate Feb. 3, 1919.
Coketon, W. Va., to Lincoln, Ill.....	\$2. 40	\$2. 80
Lincoln, Ill., to Kansas City, Mo.....	1. 40	1. 70
Kansas City, Mo., to Lamar, Colo.....	3. 70	4. 20
Total.....	7. 50	8. 70

Each of the factors in effect prior to June 25, 1918, was increased on that date under general order No. 28 of the Director General of Railroads in the specific amounts therein provided for rates on coal. That order, among other things, directed an increase of 50 cents where the rate on coal was \$3 or higher, and smaller increases where the rates were less than \$3. Applying the order to each factor resulted in a total increase in the through charges of \$1.20. If the order had been applied only to the rate for the through continuous movement it would have resulted in an increase of but 50 cents, making the total through charge \$8, the rate contended for by complainant.

Following the issuance of general order No. 28, freight rate authority No. 10, issued by the director of traffic of the Railroad Administration, became effective July 2, 1918, in which it was provided that, with exceptions not material to this case, where rates were increased under that order by specific sums the increases were to be applied to the through continuous movement instead of to each factor of a combination rate. The tariff of defendant Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, naming the rate from Kansas City to Lamar, carried a note issued in accordance with freight rate authority No. 10, reading as follows:

When the total charge on a through continuous movement of shipments of coal and coke is constructed by combination of separately established commodity rates, applying to (or from) junction points, first determine the through combination of rates in effect on June 24, 1918, and then increase such through combination of rates by the amount set below \* \* \*.

The Santa Fe tariff carrying this equalizing clause became effective January 5, 1919. Owing to pressure of work the tariffs naming the rates to Kansas City had not been corrected to make such provision for combination rates, when this shipment moved.

No attack is made upon the reasonableness of any factor of the through rate, the only question being whether the applicable rate should not have been constructed by the addition of a single increase to the combination of the factors in effect June 24, 1918.

Instances similar to the one here presented have several times been brought to our attention informally. These cases include situations where the delivering carrier is the only line which publishes the equalizing clause and the tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule. In those cases we have ruled that where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect.

We find that a rate of \$8 was legally applicable to complainant's shipment and that this rate was not unreasonable. We further find that the shipment was overcharged; that complainant paid and bore the freight charges, as above described; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found applicable; and that it is entitled to reparation in the sum of \$42.81, with interest. We are without power to order refund of alleged excess war taxes.

An appropriate order will be entered.

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No. 4800.

SLOSS-SHEFFIELD STEEL & IRON COMPANY ET AL.  
v.  
LOUISVILLE & NASHVILLE RAILROAD COMPANY  
ET AL.

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*Submitted June 30, 1921. Decided July 12, 1921.*

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Upon further consideration, amount of reparation awarded to certain complainants on shipments of pig iron, in carloads, from points in Alabama and Tennessee to Ohio River crossings and points in central freight association territory, modified. Preceding supplemental report, 60 I. C. C., 595.

Appearances same as before.

SEVENTH SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Chairman*:

In our previous reports herein we found that the rates on pig iron, in carloads, from points in Alabama and Tennessee to Ohio River crossings and points in central freight association territory were unreasonable, and that reparation should be awarded. In our last supplemental report, 60 I. C. C., 595, dated March 8, 1921, we further found that complainants, Sloss-Sheffield Steel & Iron Company, Woodward Iron Company, and The Alabama Company, successor to the Alabama Consolidated Coal & Iron Company, were entitled to reparation from the carriers defendant, and in the amounts as set out in a statement in said report and order entered in connection therewith.

Subsequently to our last decision a complete audit of the voluminous documentary evidence was made in behalf of the three complainants named. By petition filed June 30, 1921, they allege that our award of reparation erroneously failed to embrace amounts claimed on certain shipments to points in central freight association territory; that claims on account of shipments made to points not within the designated territory of destination were erroneously included therein; and that our award included a few shipments which moved prior to the period of reparation. They pray for appropriate modification of our order of March 8, 1921.

The exclusion of certain shipments to points in central freight association territory partly resulted from a misunderstanding of a

statement made in our second supplemental report. We there stated, 40 I. C. C., 738, 739:

Reparation may be awarded on shipments to points on the west bank of Lake Michigan south of and including Kewaunee, Wis., where the transportation was performed in connection with across-lake carriers from east bank ports.

By this statement we did not intend to exclude from the award of reparation claims on shipments which moved all rail to west-bank Lake Michigan ports, which were within the defined limits of central freight association territory.

Our further examination of the evidence of record shows that errors of the character pointed out by complainants were, in fact, made, and a modification of the finding in our previous report must follow.

We now find that the three complainants above named, during the period of reparation as stated in our previous reports, made shipments as described from and to the points in question, upon which rates higher than those found reasonable by us in this proceeding were collected by defendants; that they paid and bore the transportation charges thereon and have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable; and that they are entitled to reparation, with interest, from each of the initial carriers defendant in the amounts set opposite the respective names, as set forth in the following table:

Initial carriers defendant.	Amount of reparation charges		
	The Alabama Company.	Sloss-Sheffield Steel & Iron Company.	Woodward Iron Company.
Louisville & Nashville Railroad Company.....	\$9,134.25	\$53,982.80	\$15,615.88
Alabama Great Southern Railroad Company.....		5,969.80	15,189.40
St. Louis-San Francisco Railroad Company.....		10,668.00	7,732.14
Illinois Central Railroad Company.....		1,621.20	5,607.88
Mobile & Ohio Railroad Company.....		538.30	270.71
Southern Railway Company.....		30,651.60	405.26
Atlanta, Birmingham & Atlantic Railroad Company.....			9.97

Defendants that are not protected by the statute of limitations should join in the payment of reparation according as they participated in the transportation; and, as indicated in our report of April 7, 1919, such carriers as are protected by the statute may join in the payment of reparation.

An appropriate order will be entered.

62 I. C. C.

No. 11894.

## INDIANA RATES, FARES, AND CHARGES.

## IN THE MATTER OF RATES, FARES, AND CHARGES APPLICABLE BETWEEN POINTS IN THE STATE OF INDIANA.

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Submitted April 12, 1921. Decided June 14, 1921.

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1. Evidence on further hearing held not to warrant change in rates on logs between points in Indiana on intrastate traffic prescribed in *Indiana Rates, Fares, and Charges*, 60 I. C. O., 337.
2. Evidence on further hearing held not to warrant modification of order in *Indiana Rates, Fares, and Charges*, 60 I. C. O., 337, relative to rates on coal applicable intrastate in Indiana for distances of less than 30 miles.

*E. I. Lewis* and *A. B. Cronk* for Indiana Public Service Commission.

*John B. Wellman*, *Guernsey Orcutt*, *L. P. Day*, *K. L. Richmond*, *N. S. Brown*, *James Stillwell*, *D. P. Connell*, and *Homer T. Dick* for carriers.

*Clarence B. Cardy* for Princeton Coal Company, Ayrshire Coal Company, and Southern Indiana Coal Bureau; *O. P. Gothlin* for Indiana Log Shippers' Association; *R. B. Coapstick* for Indiana State Chamber of Commerce; *Samuel D. Royse* for Terre Haute Chamber of Commerce, Indiana Coke & Gas Company, Highland Iron & Steel Company, Root Glass Company, Turner Brothers Glass Company, and North Baltimore Glass & Bottle Company; *Isaac Born* and *C. P. Stewart* for Lafayette Box Board & Paper Company and Terre Haute Paper Company; *H. B. McNeely* for Indianapolis Chamber of Commerce; *C. J. Hall* for Walter Bledsoe & Company and Ben Ayr Coal Company; *O. R. Livinghouse* for Kokomo Chamber of Commerce and Globe Stove & Range Company; and *W. S. Morrison* for Indiana Portland Cement Company.

## REPORT OF THE COMMISSION ON FURTHER HEARING.

METER, Commissioner:

In *Indiana Rates, Fares, and Charges*, 60 I. C. O., 337, we prescribed rates and charges for all freight service, except on coal for distances of less than 30 miles, for intrastate application in Indiana, which would remove undue prejudice found to exist against persons and localities outside the state, and remove the unjust discrimination found to exist against interstate commerce.

Upon formal petition by the Indiana Log Shippers' Association and informal petition by certain coal shippers, the proceeding was reopened for further consideration of so much thereof as relates to rates on logs between points in Indiana on intrastate traffic, and rates on coal applicable intrastate in the state of Indiana for distances of less than 30 miles, including their relation to rates applicable intrastate in the state of Indiana for distances of 30 miles and more, and in their relation to rates applicable on interstate traffic.

At the hearing, in which the Indiana Public Service Commission cooperated, various parties intervened and presented evidence.

#### RATES ON LOGS.

The petitioning log interests contend that rates on logs applicable interstate over certain lines in the southeast, some of which operate in Indiana, are discriminatory and unduly prejudicial as compared with rates on logs applicable intrastate in Indiana, and that such intrastate rates are unreasonable. They ask us to "uproot the entire log rate situation in Indiana and substitute therefor a rate basis that will be reasonable, just, equitable, and nondiscriminatory."

In our original report in *Indiana Rates, Fares, and Charges*, *supra*, we said at page 343:

The present intrastate commodity rates on logs in Indiana are shown by shippers to be much higher than those which apply intrastate and interstate for similar distances on certain lines in the southeast. Some of these southeastern lines also operate in Indiana, and there apply the prevailing Indiana basis. The shippers contend that therefore there is discrimination against intrastate commerce, particularly in view of the fact that operating costs are lower in Indiana than in the southeast. It appears that the southeastern rates with which comparison is made are in most instances transit or proportional rates, or otherwise restricted in their application, for which due allowance should be made. Comparisons submitted by the carriers show that the present Indiana intrastate rates are much below the basis generally observed in central territory. Upon the whole, the Indiana scale in effect just prior to August 26, if increased 40 per cent, would compare favorably with the present interstate rates in central territory, but what the shippers desire is a much reduced scale of log rates for general application in Indiana and all central territory.

No evidence was introduced materially changing the evidence thus summarized. Rate comparisons were submitted showing lower transit rates in the south, and deductions therefrom were made to compare the net sums received by the carriers from Kentucky intrastate transit rates with the sums received from Indiana nontransit intrastate rates. The only comparison of nontransit rates showed no great difference between Indiana and Kentucky intrastate rates. And it was admitted that present Indiana intrastate rates are in line with those in Illinois and Ohio.



Petitioners introduced evidence to show that Indiana log interests are unable to compete successfully with similar interests in the south under present Indiana intrastate log rates; that the movement of logs has materially decreased within the last year; that certain mills in Indiana are about to close down; and that a large mill at New Albany is to be moved into southern territory. They contend that this situation is in part the result of present intrastate log rates and ask that those rates be readjusted and placed on a basis which will enable Indiana log shippers to meet southern competition.

The evidence is that the lumber region of Indiana has been cut over five or six times, and that from 60 to 75 per cent of the logs now shipped from that region are of poor grade. Petitioners buy small tracts of timber, sometimes purchasing but a few individual trees at a time. They cut and ship these, then move their crews to other tracts. It is stated that in the south the timber is in vast tracts; that many mills are located at the forest; and that log companies make use of steam hoisting apparatus, steel log skidders, etc., and some have their own logging railroads. The logs produced in Indiana are poorer, smaller, and do not load as heavily as southern logs. The waste in milling in Indiana is greater on account of the low grade of the logs.

Petitioners are interested primarily in the reasonableness of the Indiana intrastate rates irrespective of any increase in those rates to put them on a parity with interstate rates. They introduced little evidence as to the relationship of interstate and intrastate log rates, and the only evidence offered relative to similarity of conditions in Indiana and the south is a comparison of the average ton-mile costs of moving all freight in the Ohio-Indiana-Allegheny region with like costs in the southern region.

The carrier introduced evidence to show that the Indiana commission prescribed the first log scale in September, 1907, and an additional scale for multiple line hauls in May, 1912. The increase permitted in interstate log rates in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, was authorized by the state commission for intrastate rates, but the increase of 1 cent per 100 pounds authorized by us March 12, 1918, for interstate rates was denied intrastate by the Indiana commission which in May of that year authorized a 15 per cent increase making the single-line mileage scale in Indiana 1 cent lower than the central freight association scale for 10 miles, 0.5 cent lower for the blocks from 10 to 80 miles, and the same beyond the 80-mile block, rates to apply via the direct route. The increases under general order No. 26 applied both state and interstate. Following the 40 per cent increase in interstate rates under Ex Parte 74 the Indiana commission authorized

a 10 per cent increase in intrastate log rates. Carriers argue that since the interstate increases have exceeded the intrastate increases log shippers in Indiana even with a 40 per cent increase have an undue advantage over shippers in Illinois and Ohio.

There appears to be no way in which the discrepancy complained of between log rates in official classification and southern classification territory could be corrected in this proceeding, even if it were shown to be unjustly discriminatory or unduly prejudicial.

#### RATES ON COAL.

The informal petition upon which the coal-rate feature of this case was reopened alleges disruption of established rate groups and resulting prejudice to certain shippers and undue advantage to others.

The evidence is that Indiana and Illinois coal fields, for many years prior to April 1, 1917, were grouped with reference to rates to the northwest under the so-called Chicago and St. Paul differential system. There were four groups of Indiana mines, the Clinton-Brazil group north of and adjacent to Brazil; the Linton-Sullivan group, about equidistant from Terre Haute and Vincennes, extending from northwest of Sullivan south and east to Linton; the Princeton group north of Evansville, extending south from Princeton to Fort Branch and east to Winslow; and the Booneville group northeast of Evansville. The Brazil-Clinton mines had rates to Chicago destinations 5 cents lower than those from the Springfield, Ill., mines, but rates were the same from the two groups to St. Paul destinations. Other Indiana groups were adjusted by differentials over the Brazil-Clinton rate to both Chicago and St. Paul points. The Linton-Sullivan group was 10 cents, the Princeton group 16 cents, and the Booneville group 20 cents higher per ton than the Brazil-Clinton group. Another differential existed to gas-belt destinations in central Indiana. The Brazil-Clinton and Linton-Sullivan groups took the same rate to the gas belt, but the Princeton group was 7 cents and the Booneville group 10 cents higher.

The petitioning coal shippers contend that this group adjustment applied equally to short-haul coal movements; that the coal rates from the Princeton fields to Terre Haute should not exceed those from Sullivan field to that destination by more than 7.5 cents; and that the present rates from those groups to that destination are unduly prejudicial to the Princeton Coal Company, a producer within the Princeton group, and result in an unjust discrimination and undue preference in favor of operators in the Linton-Sullivan group. They request the reestablishment and maintenance of the rate groups and alleged differentials as to short-haul coal, and are less interested in the level than in the relationship of the rates. Other shippers of

coal, hereinafter designated interveners, argued that the purpose of the groups was to extend consumption markets and develop abundant and scattered production, and that there was no intention to move coal from long-haul points into short-haul markets adjacent to producing points. They desire the maintenance of the present rates. The carriers expressed willingness to reestablish the rate group for movements of less than 30 miles, and to establish rates from the Princeton mines on the 7.5-cent differential basis if such short-haul rates should be increased 40 per cent; and they request such an increase.

Petitioners' evidence, to a large extent, deals with the alleged differential of rates to Terre Haute from the Princeton group over those from the Linton-Sullivan group. That city is the center of the largest coal-producing district in Indiana and is surrounded by about 150 railway mines situated at a distance of from less than one to 39 miles, all located in the Brazil-Clinton and Linton-Sullivan groups.

Prior to April 1, 1917, the rates from adjacent mines to Terre Haute were on a mileage basis, 20 cents per ton from near-by mines, 25 cents from the intermediate belt and 30 cents from the outer belt in those groups. In April, 1917, we allowed the carriers in central freight association territory a 5 per cent increase, but the actual increase in rates on coal, including the short-haul rates into Terre Haute, was 5 cents per ton. A similar increase was permitted at the same time in Indiana intrastate rates. In October, 1917, the carriers increased interstate coal rates 15 cents per ton under our order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. The Indiana intrastate rates into Terre Haute from adjacent mines were increased only 10 cents per ton, the 15-cent increase being restricted intrastate to rates over 80 cents. On October 5, 1918, the carriers, acting under general order No. 28, increased all coal rates into Terre Haute from adjacent territory, grouping them at 70 cents per ton. August 1, 1919, all rates into Terre Haute on one-line hauls from the Brazil-Clinton and Linton-Sullivan groups were reduced to a uniform rate of 60 cents per ton. On October 4, 1920, the Indiana commission disrupted the grouping made in 1918 by fixing a rate of 55 cents for hauls of 10 miles and less and 65 cents for hauls of from 10 to 30 miles. Our original order in this proceeding left the rates for less than 30 miles undisturbed.

The Princeton Coal Company is the principal objector as to these rates and the only shipper of coal in any material amount from mines in the Princeton group to Terre Haute. Its Princeton mine is located 82 miles south of Terre Haute. The company owns another mine about 3 miles from that city which has a capacity of from 250 to 300 tons daily, a part only of the output of which is disposed of in Terre Haute.

A retailer of "Ayrshire" coal in Evansville and the Ayrshire Coal Company, with mines located on the Southern Railway 66 miles from that city, complain of the disruption of the Princeton-Booneville grouping and ask that rates be adjusted to accord these Ayrshire mines the same rate into Evansville as mines located on the Evansville & Indianapolis Railroad within 30 miles of that city. In the case of these rates also, petitioners are less interested in the level of rates than in the rate relationship. Carriers express the same conditional willingness to make this desired adjustment.

There are 29 mines in the combined Princeton-Booneville groups, other than 5 mines in the immediate proximity of Evansville, 15 of which are more than 30 miles distant from that city. The evidence is that prior to October 4, 1920, all mines in these groups took a 70-cent rate to Evansville, but that under the 33½ per cent increase authorized by the Indiana commission for rates on movements in excess of 30 miles, mines within the 30-mile limit received a 65-cent rate while the rates from other mines in the same groups were increased to 93.5 cents. Our original order in this proceeding maintained the 65-cent rate and increased the 93.5-cent rate to 98 cents.

Slightly over 10 per cent of the output of the Ayrshire mines goes to Evansville. The coal from these mines is not materially different from that from nearer mines in these groups and the Evansville retailer rests his objection primarily upon the fact that he has widely advertised, and built up his business on, the sale of "Ayrshire" coal.

Extensive exhibits were introduced by the respondents to show that our failure to increase rates for less than 30 miles created discrimination in certain instances to specified destinations in favor of shippers and users of coal moving distances just within that limit and against shippers and users of coal moving slightly greater distances. Interveners point out that in some cases this result is produced by figuring mileage from the mine rather than the billing station. No shipper stresses this point, and the movement of coal under the rates stated in the exhibits is not shown.

Rate comparisons were introduced by the Southern Railway showing that from mines on its line in Illinois the minimum rate is 84 cents while in Indiana it is 55 cents, and for a distance of 25 miles the Illinois rate is \$1.12 and the Indiana rate 65 cents, and it was stated that no reason existed why rates on its line should be lower in Indiana than in Illinois.

Evidence was introduced estimating the loss in revenue to the carriers resulting from the elimination of coal rates for less than 30 miles from the increases authorized in our prior order in this proceeding. Possibility of an interstate movement of coal from mines

at Meeks, Humrick, and Quaker in Illinois, a distance of less than 80 miles to Cayuga, Ind., and of from 40 to 50 miles into Terre Haute was pointed out; and it was stated that coal might move to Terre Haute interstate from St. Bernice, West Clinton, Blanford, Libertyville, and New Goshen in Indiana, in competition with coal from neighboring Indiana mines moving intrastate. Respondents introduced evidence to show that prior to October 4, 1920, the rate on coal moving from the Harrisburg, Ill., district, 90 miles to Vincennes, was 80 cents and the rate from the Princeton group was 70 cents, and that the present rate from Harrisburg is \$1.12 and the rate from Princeton 65 cents.

Intervenors testified that no coal moves into Terre Haute from interstate points except a small amount of certain eastern coal used for special purposes; that there is no movement of coal from Meeks, Humrick, or Quaker; and that the movement from Harrisburg to Vincennes was a temporary and abnormal one resulting from an Indiana price-fixing statute which permitted the Illinois producers to market their coal in that city to better advantage than Indiana operators could and made Indiana coal unobtainable. They argue that rate increases on short-haul coal, even without the 40 per cent increase, have been proportionately greater than those on longer movements and therefore that the shorter hauls bear their full share of the burden.

Upon consideration of the record we find no reason to modify our prior order in this proceeding.

No order is necessary.

HALL, *Commissioner*, concurring:

I am in accord with the majority report except as to rates on coal for hauls of less than 80 miles. This distinction, based as it is on mileage, should be eliminated from our former report and order. As the matter now stands if the haul is greater than 80 miles the order applies; if less, it does not apply. And yet the rate may be the same for both hauls. The coal measures underlying Ohio, Indiana, and Illinois do not break at state lines, and no reason appears why disparity in rates for 25-mile hauls, one of which crosses the state line and the other does not, may not be as unjust in its discrimination against interstate commerce as where both hauls are for 80 or 100 miles.

COMMISSIONERS CAMPBELL and LEWIS did not participate in the disposition of this case.

No. 11789.

OMAHA CHAMBER OF COMMERCE, TRAFFIC BUREAU,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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*Submitted May 25, 1921. Decided July 15, 1921.*

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Reconsignment rules and charges applicable on coal and coke, in all cars, and on freight in open-top cars, effective August 20, 1920, in the territory west of the Mississippi River on the lines of the defendants, found not unreasonable or unduly prejudicial. Complaint dismissed.

*C. E. Childs* for complainant.

*A. P. Humburg, K. F. Burgess, A. B. Enoch, O. W. Dynes, H. G. Herbel, W. H. Jacobs, H. A. Scandrett, and L. H. Strasser* for defendants; *J. C. La Coste* for Chicago, Rock Island & Pacific Railway Company; *A. F. Cleveland* for Chicago & North Western Railway Company; and *Geo. M. Entrikin* for Wabash Railway Company.

*J. P. Haynes* for Traffic Bureau, Chamber of Commerce of Sioux City, Iowa; *J. H. Tedrow*, for Chamber of Commerce of Kansas City, Mo.; *Allen S. Olmstead, 2d*, for American Wholesale Coal Association; and *John J. Ledwith* for the Lincoln, Nebr., Chamber of Commerce, interveners.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*CLARK, Chairman:*

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainant and the case was argued orally before us:

Complainant is a voluntary association of shippers. By complaint filed August 24, 1920, it is alleged that the reconsignment rules and charges, effective August 20, 1920, applicable on coal and coke in all cars and on freight in open-top cars, in the territory west of the Mississippi River on the lines of the defendants, are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to enter into a general investigation of the practice of reconsignment of coal and coke in all equipment and of freight in open-top cars in the above territory, to prescribe just and reasonable reconsignment

rules and charges on such traffic for the future, and to award reparation.

The Traffic Bureau of Sioux City, Iowa, the Chamber of Commerce of Kansas City, Mo., the American Wholesale Coal Association, and the Lincoln, Nebr., Chamber of Commerce intervened in support of the complaint. The testimony at the hearing was confined to the reasonableness and propriety of the reconsignment rules and charges effective August 20, 1920, in the territory described.

In the summer of 1920 a serious shortage of coal cars existed which called for the exercise of the emergency powers conferred upon us by paragraphs (10) to (17), both inclusive, of section 1 of the interstate commerce act. Of that situation and of the efforts made to relieve it we take judicial notice. In the course of our investigation of this situation it appeared that the promiscuous reconsignment of cars loaded with coal tended to reduce the available car supply and accordingly on July 13, 1920, we suggested to the carriers that as an emergency measure they take immediate steps to reduce this practice to a minimum. Pursuant to that suggestion the rules and charges here assailed were established under our special permission authorizing their publication upon less than statutory notice.

On November 26, 1920, being convinced that the emergency which prompted the establishment of the special reconsignment rules had in large measure passed, we recommended to the carriers that such rules and charges be canceled and this was promptly done. It is conceded by complainant that this leaves for consideration only the reparation claimed because of the charges assessed while the special rules were in effect. Considerable evidence was offered by complainants for the purpose of showing that under the conditions surrounding marketing of coal in Nebraska, Iowa, and northern Missouri, the rules complained of not only failed to accomplish the purpose of increasing the car supply but actually reduced that supply and otherwise worked hardship upon the receivers of coal in that territory. We believe, however, that under the circumstances recited, the establishment of these rules was fully justified even though instances might be shown in which they failed of their intended purpose, and that the carriers should not be required to respond in damages for the increased charges arising thereunder.

On brief the interveners insist that we consider the reasonableness of the rules and charges in effect prior to August 20, 1920, but those rules and charges are clearly not in issue.

We find that the reconsignment rules and charges applicable on coal and coke in all cars and on all freight in open-top cars effective August 20, 1920, on the lines of the defendants were not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 10887.

## SECURITY MILLS &amp; FEED COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN RAILWAY  
COMPANY, ET AL.PORTIONS OF FOURTH SECTION APPLICATIONS NOS.  
458, 708, 1074, 1548, 1561, 1563, 1572, 1573, 1625, 1747, 1952, AND  
3925.*Submitted October 21, 1920. Decided June 23, 1921.*

Upon complaint that the rates on cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal from points of production in southern states to Knoxville, Tenn., and that the rates on mixed feed from Knoxville to points of consumption in Virginia and Carolina territories and north of the Potomac River are unreasonable and unduly prejudicial, *Held*:

1. That the rates on meal to Knoxville are not unreasonable; but that they are unduly prejudicial to the extent that they exceed on a distance basis the contemporaneous rates on like traffic to Nashville, Tenn.
2. That the rates on peanut oil-cake meal, soya-bean meal, velvet-bean meal, palm-kernel meal, and copra meal to Knoxville are unduly prejudicial to the extent that they are higher in relation to rates on cottonseed meal than the contemporaneous rates on like traffic to Nashville and Memphis, Tenn., Louisville, Ky., and Cincinnati, Ohio.
3. That the rates on mixed feed from Knoxville are not unreasonable; but that as to points on defendants' lines on and south of the line of the Southern Railway extending from Greensboro to Goldsboro, N. C., they are unduly prejudicial to the extent that they exceed on a distance basis the contemporaneous rates on like traffic from Nashville, Tenn., with a minimum differential of 4 cents lower than the latter rates, and to the extent that they exceed the lowest contemporaneous rate on like traffic from Memphis, Tenn., Louisville, Ky., or Cincinnati, Ohio; and that as to points north of said line of the Southern Railway the rates are unduly prejudicial to the extent that they exceed the contemporaneous rates on like traffic from Nashville or Memphis, Tenn.
4. Fourth section relief denied.

*C. R. Hillyer* for complainant.*Charles J. Rixey, jr., Alex. M. Bull, and Claudian B. Northrop* for defendants.



## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

## BY DIVISION 1:

Exceptions were filed by complainant and defendants to the report proposed by the examiner, and the parties were heard in oral argument.

Complainant, a corporation, is engaged at Knoxville, Tenn., in the manufacture of mixed feeds for live stock and poultry. By complaint, filed August 21, 1919, it attacks the inbound rates on cottonseed meal, peanut or peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, and the outbound rates on the feed manufactured therefrom. It is alleged that the rates on meals from points in southern states to Knoxville are unreasonable *per se* and unjustly discriminatory and unduly prejudicial in comparison with corresponding rates to Nashville and Memphis, Tenn., Louisville, Ky., Cincinnati, Ohio, and other points; and that the rates on the feed from Knoxville to points of consumption in the south and southeast, particularly in North Carolina, South Carolina, and Virginia, and in eastern and northeastern territories, are unreasonable and discriminatory, and afford undue preference to complainant's competitors at the above points. We are asked to establish reasonable and nonprejudicial rates for the future and to award reparation. Rates will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The meals which complainant uses, or desires to use, are obtained at various points in the south, such as Atlanta and Macon, Ga., Birmingham and Montgomery, Ala., and New Orleans, La., and are mixed with blackstrap molasses and with grain or grain products to produce mixed feeds. The principal market for the manufactured product is in the east and southeast.

Knoxville is situated in eastern Tennessee on the main lines of the Southern Railway and the Louisville & Nashville Railroad 422 miles east of Memphis, 216 miles east of Nashville, and 277 and 292 miles south of Louisville and Cincinnati, respectively. It has direct rail connection with many of the principal points in the south where meals are produced, and with Ohio and Mississippi river crossings through which grain moves. Nashville, one of the alleged preferred points, is 238 miles east of Memphis and 186 miles south of Louisville; the others are located on the Ohio or Mississippi rivers. Mixed feeds are manufactured at each of these points from raw materials received from the same sources and are sold in competition with complainant's product in the territory east of Knoxville.

Complainant uses only cottonseed meal, peanut oil-cake meal, and velvet-bean meal in the manufacture of its mixed feeds. Cottonseed meal is a by-product of the cottonseed oil mill and peanut oil-cake meal is a similar by-product resulting from the extraction of oil from peanuts. Peanut meal and peanut oil-cake meal are different commodities, and although not affirmatively shown on the record it is assumed that the latter is the commodity in which complainant is interested. Velvet beans are not crushed for oil but are ground into a meal and used either as a feed or as an ingredient of mixed feed. Soya-bean meal, palm-kernel meal, and copra meal are the by-products of mills crushing soya beans, palm kernels, and coconuts, respectively. It appears from the record that complainant can not always obtain cottonseed, peanut oil-cake, and velvet-bean meals and it therefore wishes to be in position to substitute other kinds of which there may be an available supply. The rates on velvet-bean meal, copra meal, and palm-kernel meal are higher to Knoxville, as a rule, than those on the cottonseed, peanut oil-cake, and soya-bean meals, while to Louisville and Cincinnati the rates on the different meals are generally the same.

Cottonseed meal generally moves between points in the south at the rates applicable to commercial fertilizer, and is given the fertilizer rating in the southern classification. When that basis was established, in 1889, cottonseed meal was used mainly as a fertilizer; it is now used principally as a feed material. Soya-bean meal and peanut oil-cake meal came into use later, and as they are analogous to cottonseed meal and used for the same purposes they are generally given the same commodity rates. Palm-kernel and copra meals have no fertilizing properties. At present no palm-kernel meal is manufactured, and copra meal is produced only at the ports. These commodities are rated class D in the southern classification, which is also the rating on velvet-bean, soya-bean, and peanut oil-cake meals.

As stated, cottonseed, peanut oil-cake, and soya-bean meals generally move under the fertilizer rates, and velvet-bean, palm-kernel, and copra meals at the class-D rates. This is the basis in effect to Knoxville from such points as Birmingham and Macon. A different basis, however, is in effect to Nashville, Memphis, Louisville, and Cincinnati, as will be noted from the following tables, which show, in addition to the rates on the meals, the class-D and fertilizer rates. The points of origin shown are among those selected by complainant as representative of other points in southern territory where the various meals are produced.

		To Knoxville (cents).	To Nashville (cents).	To Memphis (cents).	To Louisville (cents).	To Cincinnati (cents).
<i>From Atlanta:</i>	<i>Miles</i>	<i>223</i>	<i>260</i>	<i>418</i>	<i>458</i>	<i>474</i>
Cottonseed.....	12.5	12.5	14.5	19.5	19.5	19.5
Peanut oil cake.....	22	12.5	14.5	19.5	19.5	19.5
Soya bean.....	22	12.5	14.5	19.5	19.5	19.5
Velvet bean.....	22	12.5	14.5	19.5	19.5	19.5
Class D.....	22	21.5	27.5	30	30	30
Fertilizer.....	12.5	15	17.5	22.5	22.5	22.5
<i>From Birmingham:</i>	<i>Miles</i>	<i>254</i>	<i>307</i>	<i>451</i>	<i>494</i>	<i>479</i>
Cottonseed.....	16.5	10.5	11.5	16.5	19	19
Peanut oil cake.....	16.5	10.5	11.5	16.5	19	19
Soya bean.....	16.5	10.5	11.5	16.5	19	19
Velvet bean.....	20	10.5	11.5	16.5	19	19
Class D.....	20	16.5	20	25	25	25
Fertilizer.....	16.5	10.5	15	20	22.5	22.5
<i>From Macon:</i>	<i>Miles</i>	<i>311</i>	<i>370</i>	<i>505</i>	<i>560</i>	<i>561</i>
Cottonseed.....	20.5	17.5	19	24	24	24
Peanut oil cake.....	20.5	17.5	19	24	24	24
Soya bean.....	20.5	17.5	19	24	24	24
Velvet bean.....	23	17.5	19	24	24	24
Class D.....	23	24	30	32.5	32.5	32.5
Fertilizer.....	17	17.5	19	24	24	24
<i>From Montgomery:</i>	<i>Miles</i>	<i>398</i>	<i>304</i>	<i>545</i>	<i>491</i>	<i>476</i>
Cottonseed.....	17.5	13	17.5	19.5	22	22
Peanut oil cake.....	17.5	13	19	19.5	22	22
Soya bean.....	32.5	13	20	19.5	22	22
Velvet bean.....	32.5	13	19	19.5	22	22
Class D.....	32.5	16.5	20	25	27.5	27.5
Fertilizer.....	17.5	13	17.5	22.5	25	25
<i>From New Orleans:</i>	<i>Miles</i>	<i>608</i>	<i>623</i>	<i>360</i>	<i>312</i>	<i>290</i>
Cottonseed.....	27	24	12.5	24	24.5	24.5
Peanut oil cake.....	24	24	15	24	24.5	24.5
Soya bean.....	27	24	12.5	24	24.5	24.5
Velvet bean.....	34	20	15	20	21.5	21.5
Copra.....	34	20	15	24	24.5	24.5
Palm kernel.....	34	20	15	24	24.5	24.5
Class D.....	34	20	15	20	21.5	21.5
Fertilizer.....	27	25	12.5	25	27.5	27.5

Various inconsistencies will be noted in the rates above shown. The rate on cottonseed meal from Atlanta to Knoxville is 12.5 cents, which is also the rate on commercial fertilizer; but on peanut oil-cake meal and soya-bean meal the class-D rate of 22 cents applies. A rate of 12.5 cents applies on the same commodities from Atlanta to Nashville, 66 miles farther, while the rate on commercial fertilizer to that point is 2.5 cents higher, or 15 cents. The rate on velvet-bean meal from Atlanta to Knoxville is the class-D rate of 22 cents, but that commodity moves to Nashville at the rate applicable to cottonseed meal, which, as stated, is 2.5 cents lower than the rate on fertilizer. Cottonseed meal, peanut oil-cake meal, and soya-bean meal move from Macon to Knoxville at a rate of 20.5 cents, or 3.5 cents higher than the rate on fertilizer, and to Nashville, 65 miles farther, at the fertilizer rate of 17.5 cents. Although the class-D and fertilizer rates are higher from Macon to Nashville than from that point to Knoxville, the distance being greater, the rates to Nashville on meals are

lower. The rates from Montgomery also illustrate the disadvantage under which complainant is placed in competing with the manufacturer at Nashville. The rate on soya-bean meal and velvet-bean meal from Montgomery to Knoxville is the class-D rate of 32.5 cents. From Montgomery to Nashville the fertilizer rate of 13 cents is applied. It will be observed that the distance from Montgomery to Knoxville is substantially the same as from Macon to Nashville, and that the rates on cottonseed meal and peanut oil-cake meal are the same. The distance from Macon to Knoxville is but 7 miles greater than that from Montgomery to Nashville, but in the latter case the rate is 18 cents as compared with 20.5 cents in the former. So also cottonseed meal, peanut oil-cake meal, and soya-bean meal move from Birmingham to Knoxville at a rate of 16.5 cents and from Atlanta to Nashville, 35 miles farther, at a rate of 12.5 cents.

Complainant introduced a number of exhibits contrasting the ton-mile and car-mile earnings to Knoxville with the corresponding earnings on traffic to the alleged preferred points. For example, the 12.5-cent rate from Atlanta to Knoxville yields 11.2 mills per ton-mile as compared with earnings of 8.6 mills under the same rate from Atlanta to Nashville. The car-mile earnings under these rates, based on a loading of 60,000 pounds, are 33.6 cents and 25.9 cents, respectively. The ton-mile earnings from Macon to Knoxville are 13.1 mills on the cottonseed, peanut oil-cake, and soya-bean meals for the distance of 311 miles, and from Macon to Nashville 9.3 mills for the distance of 376 miles. The rates from Atlanta to Memphis, Louisville, and Cincinnati yield ton-mile earnings of from 6.9 to 8.6 mills, and from Macon to those points from 7.5 to 8.9 mills.

Complainant alleges that the rates to Knoxville are unreasonable *per se*, but the testimony offered indicates that the principal cause for the complaint lies in the relationship between those rates and the rates in effect on traffic to the competing localities. Defendants contend, on the other hand, that the rates to Knoxville are reasonable in and of themselves, and that rates to Nashville, Memphis, and Ohio River crossings have been depressed by competitive influences which have not affected the Knoxville adjustment. The record shows that when cottonseed meal began to move as a feed ingredient to Ohio River crossings and points beyond, rates were established on a basis which would permit it to compete with grain and grain products originating at northern and western points. The fertilizer rates were then adopted as minima. The record also shows that the rates on cottonseed meal from southern points to Memphis have been influenced by competition with the local mills at that point and by rates on water-borne traffic. But no substantial reason is shown for maintaining relatively lower rates to Nashville than to Knoxville.

Copra and palm-kernel meals, which normally move in the south under class-D rates, are accorded the cottonseed-meal basis to the Ohio River crossings although the class-D rates apply to Knoxville and, with some exceptions, to Nashville and Memphis. As hereinbefore stated, the movement of palm-kernel meal is now practically negligible and comparatively little copra meal is produced. The copra meal used at Memphis is received from Pacific coast ports.

Defendants compare the rates on cottonseed meal to Knoxville with rates found reasonable in *Oklahoma Cottonseed Crushers Asso. v. M., K. & T. Ry. Co.*, 35 I. C. C., 94, for the movement of that commodity from points in Oklahoma to points in Kansas, Nebraska, and other western states. For example, they compare the rate of 12.5 cents from Atlanta to Knoxville for 223 miles with the rate of 15 cents found reasonable for a corresponding distance from Oklahoma producing points; also the rate of 17.5 cents from Montgomery to Knoxville, 398 miles, with the rate of 18.5 cents under the Oklahoma scale; and in both of these comparisons the increases of June 25, 1918, authorized by general order No. 28 of the Director General of Railroads, are included in the Knoxville rates but not in the Oklahoma rates.

Comparisons offered by defendants of the rates to Knoxville from representative southern points, including those referred to by complainant, with rates between other points in the south for corresponding distances, indicate that the Knoxville rates are not higher than the general level obtaining elsewhere in the same territory.

Defendants contend that cottonseed meal, peanut oil-cake meal, and soya-bean meal might well move at rates higher than the fertilizer rates usually applied. They point to the history of the fertilizer rates as outlined in *Royster Guano Co. v. A. C. L. R. R. Co.*, 50 I. C. C., 34, showing how the state commissions in certain of the southern states, by establishing relatively low intrastate rates, caused the interstate rates to be maintained on a correspondingly low level. They refer also to the fact that in 1889, when the fertilizer rates were made applicable on cotton seed, that commodity was considered a waste material and could be purchased for from \$3 to \$4 a ton. It is now worth from \$50 to \$75 a ton. Peanut oil-cake meal and soya-bean meal, useful as fertilizer and feed ingredients, range in value from \$40 to \$50 a ton. Efforts have been made by the carriers to place the rates on cottonseed meal and analogous commodities on the class-D basis, and this change was proposed in the *Consolidated Classification Case*, 54 I. C. C., 1. We declined to recommend the higher rating on the cottonseed meal, as in our opinion any revision in the fertilizer rates and ratings required further study and investigation.

Upon the facts of record herein it appears that equal rates should be maintained on all of the meals here considered. But whether, as defendants contend, the fertilizer basis of rates is lower than reasonably might be required on these commodities can not be determined upon this record. As already noted, defendants now maintain rates to points at which complainant's competitors are located that in many instances are even lower than the fertilizer rates. The disadvantage complained of would not be removed by applying to all the points in question either the fertilizer rates or the class-D rates as at present adjusted, which latter basis defendants suggest as the one that normally should be applied.

North Carolina, South Carolina, and Virginia afford the natural markets for the feed manufactured at Knoxville. Knoxville is on direct routes from the points of origin of the meal in the south and the grain and grain products in the north and west to stations in those states, and is from 200 miles to 400 miles nearer such destinations than are Nashville, Memphis, Louisville, and Cincinnati. Complainant contends that in view of the relative locations of Knoxville and points with which it is in competition the latter, under the present adjustment of rates, are accorded advantages to which they are not properly entitled. Manufacturers at those points also ship in substantial volume to destinations north of the Potomac River, which complainant asserts it is unable to reach because of the materially higher rates maintained from Knoxville.

The following table shows the rates on mixed feed and the distances from Knoxville and competing points to representative destinations in Virginia, North Carolina, and South Carolina to which shipments have been made by complainant:

To—	From Knoxville.		From Nashville.		From Memphis.		From Louisville.		From Cincinnati.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Bristol, Va.	131	20	847	23.5	552	22.5	348	31	303	31
Albemarle, N. C.	302	33	517	37	724	30	501	32	600	32
Charlotte, N. C.	275	29	491	35	696	30	541	32	555	32
Lexington, N. C.	287	31	502	35	708	30	553	32	567	32
Thomasville, N. C.	298	31	513	33	718	28	563	30	577	30
High Point, N. C.	305	31	519	33	725	28	570	30	584	30
Danville, Va.	360	31	584	27	789	27	590	24	598	24
Richmond, Va.	479	33	695	28	900	30	643	23.5	580	20
Raleigh, N. C.	401	31	616	33	822	28	667	30	638	30
Cheraw, S. C.	348	34	563	36	761	31	636	33	650	33
Darlington, S. C.	378	29	590	37	743	34	631	36	645	36
Florence, S. C.	375	36	590	37	753	34	641	36	655	36
Charleston, S. C.	422	24	598	33	737	34	708	29	730	29
Wilmington, N. C.	463	21.5	679	27	854	27	729	23.5	743	23.5
Norfolk, Va.	539	33	755	28	980	30	728	23.5	695	29

<sup>1</sup> Mixed animal and poultry feed rated class D in southern classification. Rate of 13.5 cents applies on mixed live-stock feed, mill feed, grain, and certain of its products.

The evidence offered by complainant in support of its charge of unreasonableness in the rates from Knoxville consists principally of comparisons with the rates applying from the points named in the above table. Its contention is, in effect, that defendants have failed to accord to Knoxville the full benefit of its shorter distances to the consuming markets, and have thereby subjected it to unreasonable and discriminatory rates when measured by the rates from Nashville, Memphis, Louisville, and Cincinnati. Defendants challenge the propriety of these comparisons on the ground that the rates from those points all reflect the influences of the trunk line basis of rates, due to circumstances beyond their control, and therefore are not a fair measure of the Knoxville rates, which are not affected by similar conditions.

Much of the record is devoted by defendants to a review of the circumstances under which rates from Ohio River and related points to Virginia and Carolina territories were established. Those adjustments have been explained at length in former reports, particularly *Rates to North Carolina Points*, 29 I. C. C., 550; *City of Danville, Va., v. S. Ry. Co.*, 34 I. C. C., 430; and *Corporation Commission of Virginia v. C. & O. Ry. Co.*, 40 I. C. C., 24; and therefore require little discussion here. Briefly stated, it appears that competition between carriers serving Norfolk and others serving Baltimore resulted in the establishment by the former of rates from Chicago, Cincinnati, and other points in central freight association territory to Norfolk on the Baltimore basis. Rates from Louisville were then made the same as from Cincinnati, although under the standard trunk line percentages the former is a 100 per cent point and the latter an 87 per cent point. Rates from St. Louis were made on the usual trunk line percentages, and from Memphis differentials over St. Louis. Rates from Nashville were made with relation to the Memphis rates. These rates, in conformity with the fourth section, were blanketed back to include Richmond, Lynchburg, and other intermediate Virginia cities. Rates from Cincinnati and Louisville to points in Carolina territory were made by subtracting the Chicago-Cincinnati rates from the Chicago-Virginia cities rates and adding to the remainders the local, and later the proportional, rates from the Virginia cities. Rates from St. Louis and Memphis were constructed by adding differentials to the rates from Cincinnati, except that on some of the lower classes, including class D, the rates from Memphis were made lower than from Cincinnati. It thus appears that the rates to Virginia and a portion of Carolina territories from Ohio and Mississippi rivers crossings and from Nashville have been influenced by the relatively low trunk line basis to the Virginia cities, while the rates from Knoxville have not been subjected to similar influences.

As was pointed out in *Rates to North Carolina Points, supra*, the short line from Cincinnati and Louisville to the eastern and northern portions of that state is via the Virginia cities and the density of traffic of the lines operating through those gateways very greatly exceeds that of the line through Knoxville. The record herein shows that the depressed rates to Carolina territory are to points on and north of the line of the Southern Railway extending from Greensboro through Raleigh to Goldsboro. To substantially all points south of this line the rates from Knoxville are lower than those from Nashville, but to a majority of the destinations they are higher than the Memphis, Louisville, and Cincinnati rates.

The evidence offered by defendants shows that the rates on feed from Knoxville compare favorably with rates between points in southern territory for similar distances. The rate of 20 cents from Knoxville to Bristol, a distance of 131 miles, is compared with the Southern's rate of 24 cents applicable between points in Virginia, North Carolina, South Carolina, and Tennessee, and with a rate of 30 cents applying between points east and west of Paint Rock, N. C., for the same distance. Similarly, other rates from Knoxville shown on the preceding table do not appear to be out of line with rates generally applicable in the southeast for comparable distances.

The short routes from Nashville, Memphis, Louisville, and Cincinnati to most points south of the line of the Southern Railway from Greensboro to Goldsboro are through Knoxville, and the traffic moves through that point. To such points the distances from Knoxville are 216 miles less than from Nashville, 422 miles less than from Memphis, 277 miles less than from Louisville, and 292 miles less than from Cincinnati. There are other routes over which the relative distances vary, but in all cases Knoxville has a substantial advantage which has not been recognized in the adjustment of rates. Knoxville is entitled to the benefit of its proximity to points in this territory and should be accorded rates comparable, distance considered, with those applying from Nashville and the river crossings. Prior to federal control the carriers were engaged in a revision of the class and commodity rates to points in Carolina territory in accordance with the decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, but this revision has not yet been completed. Defendants urge that if the present adjustment is held to be unlawful and to subject Knoxville to undue prejudice and disadvantage an order should be entered in such form as to permit them to remove the undue prejudice by increasing the rates from the more distant points rather than by reductions from Knoxville.



Complainant is particularly desirous of a readjustment of the rates on feed to points north of the Potomac River. The rates on mixed feed now in effect from Knoxville are materially higher than those applying from the points where its competitors are located, as will be observed from the following table:

To—	From Knoxville.		From Nashville.		From Memphis.		From Louisville.		From Cincinnati.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Baltimore.....	549	39	770	30.5	971	32	702	23.5	593	20
Philadelphia.....	664	42	879	31.5	1,066	33	774	24.5	690	21
New York.....	773	42	989	32.5	1,194	35	864	26.5	750	23
Boston.....	968	42	1,173	35.5	1,372	37	1,057	28.5	943	25

The complaint alleges that the above rates from Knoxville are unreasonable *per se*, but it is apparent from complainant's evidence that here also it is the relation of the Knoxville rates to those from the competing localities, rather than the reasonableness of the rates themselves, that has occasioned the complaint. Little or no evidence was offered to show that the rates are intrinsically unreasonable, and the only comparisons submitted were with rates under which the traffic of complainant's competitors moves. In justification of the Knoxville rates defendants refer to *Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R. Co.*, 49 I. C. C., 205. In that case we held that the rates from trunk line and New England territories, particularly eastern seaboard cities, to Knoxville were not unreasonable or unduly prejudicial in relation to rates on like traffic from the same points to Cincinnati, and that the maintenance of higher rates from Boston, Mass., and interior eastern points to Knoxville than from New York to Knoxville was not unlawful, notwithstanding the fact that on traffic to Nashville the New York rates were applied from such points. The rates on feed from Knoxville to Baltimore, New York, and other eastern cities are lower than those in the opposite direction. This record does not warrant the conclusion that they are unreasonable. It affords no justification, however, for higher rates from Knoxville than from Nashville.

There were assigned for hearing with the complaint those portions of fourth section applications filed by the carriers in which they ask authority to continue to charge lower rates on cottonseed meal from Memphis to Bristol, Va.-Tenn., and on mixed feed from Memphis and Nashville to Bristol, Norfolk, Va., and Baltimore, Md., and from Memphis and Louisville to Raleigh, N. C., than are contemporaneously in effect from Knoxville and other intermediate points.

When the complaint was filed the rate on mixed feed from Nashville and Memphis to Bristol was 18.5 cents, and from Knoxville 20 cents. Since then the rate from Nashville and Memphis has been increased to 28.5 cents with no change from Knoxville, and consequently the fourth section departure in rates to Bristol has been eliminated. Defendants still maintain lower rates on feed from Memphis and Nashville to Norfolk and Baltimore, and from Memphis and Louisville to Raleigh, than are in effect from Knoxville. The short-line routes are in each case through Knoxville.

No defense was offered in justification of the maintenance of the higher rate from Knoxville to these destinations. Under the recent decision in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648, the defendants were required to observe the fourth section in their adjustment of rates from eastern trunk line and New England territories, Virginia cities, and south Atlantic ports to points intermediate to Nashville. In the absence of any evidence on behalf of defendants justifying the departures from the provisions of the fourth section in the adjustment of rates on cottonseed meal and feed from Knoxville to eastern points, the applications, to the extent that they are here involved, will be denied. From this finding it will result that the rates on mixed feed from Knoxville to Baltimore may not exceed those from Nashville and Memphis, and there is no apparent reason why the rates from these points of origin to Philadelphia, New York, and other eastern points should not also be realigned in the same manner.

Upon all the facts of record, we find:

1. That the rates on cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal from all points of origin on defendants' lines in the states of Louisiana, Mississippi, Alabama, Georgia, and Florida, and also in Tennessee when moving interstate, to Knoxville, Tenn., are not shown to have been or to be unreasonable, but that they were, are, and for the future will be unduly prejudicial to the extent that they exceeded or exceed on a distance basis the rates contemporaneously maintained on like traffic from said points of origin to Nashville, Tenn.

2. That rates on peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal from said points of origin to Knoxville, Tenn., were, are, and for the future will be, unduly prejudicial to complainant and unduly preferential of its competitors at Nashville and Memphis, Tenn., Louisville, Ky., and Cincinnati, Ohio, to the extent that they are higher in relation to the rates on cottonseed meal than the rates contemporaneously maintained by defendants on like traffic from said points of origin to said latter points.

3. That the rates on mixed feed from Knoxville, Tenn., to destinations embraced in the complaint are not shown to have been or to be unreasonable; but that as to points on defendants' lines on and south of the line of the Southern Railway, extending from Greensboro to Goldsboro, N. C., they were, are, and for the future will be, unduly prejudicial to the extent that they exceeded or exceed on a distance basis the rates contemporaneously maintained on like traffic from Nashville, Tenn., to said points, with a minimum differential of 4 cents lower than said latter rates, and to the extent that they exceeded or exceed the lowest rate contemporaneously maintained on like traffic to said points from Memphis, Tenn., Louisville, Ky., or Cincinnati, Ohio; and that as to points north of said line of the Southern Railway, embraced in the complaint, including the Virginia cities, Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., said rates were, are, and for the future will be unduly prejudicial to the extent that they exceeded or exceed the rates contemporaneously in effect from Nashville or Memphis, Tenn.

4. That fourth section relief should be denied.

Complainant prays for reparation, but as there is no evidence of damage reparation will be denied.

Orders will be entered accordingly.

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No. 11414.

SOUTHERN VENEER ASSOCIATION ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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Submitted February 14, 1921. Decided July 15, 1921.

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Maximum rates on poplar and gum logs, in carloads, from South Carolina points to certain destinations in North Carolina prescribed for the future. Reparation awarded in certain instances where lower combinations existed over the routes of movement than the rates charged, and where shipments were misrouted.

*Charles E. Cotterill and J. T. Ryan* for complainants.

*Henry Thurtell and H. L. Walker* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*DANIELS, Commissioner:*

A proposed report was served upon the parties to which exceptions were filed by defendants.

Complainants are the Southern Veneer Association and its members who are engaged in the manufacture and sale of thin-cut lumber, usually referred to as veneer. By complaint filed April 21, 1920, they allege that the rates applied on carload shipments of logs from points in South Carolina on the Seaboard Air Line Railway, hereinafter termed the Seaboard, and on the Atlantic Coast Line Railroad, hereinafter termed the Coast Line, to High Point, Linwood, Cleveland, Statesville, Rutherfordton, Winston-Salem, Lenoir, Thomasville, and Taylorsville, N. C., were unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reasonable rates for the future and an award of reparation are asked. Rates are stated herein in cents per 100 pounds except as otherwise indicated, and, with the exception of those prescribed, do not include the general increase authorized by us on July 29, 1920.

None of the destinations named is reached by the Coast Line; and only one, Rutherfordton, is reached by the Seaboard. All are served by other carriers, principally the Southern Railway which reaches all except Lenoir.

The mills at the destinations named consume annually approximately three or four thousand carloads of poplar and gum logs, of  
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which about 75 per cent now comes from South Carolina as compared with about 25 per cent five years ago. The average loading of the flat cars used, according to different witnesses, ranges from 44,000 to 58,000 pounds.

For the joint-line movements there are in some instances joint rates on logs stated in dollars per car of 40,000 pounds; in other instances joint rates on lumber, logs, and other forest products stated in cents per 100 pounds. Joint rates do not apply from all stations and joint and combination rates alternate, making wide variations in rates from adjacent stations.

In some instances the joint rates exceed the combinations of the interstate locals. In others the rates assailed are higher than would result from the use of certain intrastate log-rate scales in South Carolina, North Carolina, and other states. From some Coast Line stations in South Carolina to certain of the destinations complainants assert that the rates are higher than the rates to the same destinations from points in North Carolina to which the South Carolina points are intermediate. This rate situation is protected by fourth section order No. 4773. Exhibits were submitted designed to show that while joint rates apply over various routes, lower combinations exist via routes that are considerably longer than the short-line routes; and that where no joint rates are in effect, the combination rates via short-line routes are materially higher than via longer routes.

Comparison was made by complainants of the rates charged and of their proposed joint-line scale, hereinafter referred to, with various specific rates and numerous intrastate and interstate log and lumber scales in southeastern territory. Defendants compared the different factors and the through rates with other mileage scales and through rates on logs in southern classification territory and elsewhere voluntarily established by other lines or fixed or approved by us, and refer to the fact that we have in many cases approved through rates constructed by combination of reasonable local rates.

Complainants compare the rates on pulp wood, gum and poplar, round and split, from Seaboard stations in South Carolina to Bostic, N. C., with the rates on logs from the same stations to Rutherfordton, approximately 7 miles west of Bostic, both of which are on the Seaboard, and ask for a one-line scale from Seaboard points to Rutherfordton corresponding to these rates to Bostic. The rates cited to Bostic were canceled, effective February 29, 1920, the tariff carrying a notation that the cancellations were "account obsolete rates."

For the Coast Line and Seaboard it is asserted that they maintain through rates on logs from all points on their lines in South Carolina to factories in North Carolina from and to which they have been advised there is a movement. Complainants insist that through

rates should be established from all of defendants' stations to all of the destinations named, because several carloads of logs may move from a given station and the next shipment may move from an adjacent station.

The Coast Line concedes it is using several scales in constructing these log rates, as illustrated by the following excerpt from one of its exhibits:

Miles	A	B	C
5	3	4.5	5
50	6	6	9
100	6.5	7	12
150	7	7	14.5

A—A. C. L. South Carolina intrastate scale (80 per cent of class P, per car 20,000 pounds, reduced to cents per 100 pounds), used in constructing through rates when made on Columbia, S. C., combination.

B—A. C. L. South Carolina interstate scale (80 per cent of class P, per car 20,000 pounds, reduced to cents per 100 pounds), used in constructing through rates when made on South Carolina junction points other than Columbia.

C—A. C. L. Virginia-Carolina interstate scale, lumber rate, used in constructing through rates when made on North Carolina junction points.

From points such as Columbia, Sumter, Camden, Orangeburg, Denmark, and Pregal, S. C., the Coast Line considered it unprofitable to attempt to meet the single-line rates of the Southern.

Early in 1917 the Coast Line reduced its through rates to Lexington, N. C., Winston-Salem, High Point, and Thomasville to effect a better relative adjustment as compared with the rates of the Southern to those points, and for the further reason that as two of these points are on the Winston-Salem Southbound Railroad, of which the Coast Line is joint owner, it would profit to the extent of the participation by the Winston-Salem Southbound in the outbound movement of the manufactured products.

For competitive reasons the Seaboard established the same rates as applicable via the Coast Line to the junction points. To Rutherfordton the Seaboard carries specific log rates from Florence, McBee, Sumter, and a few other South Carolina points on its line; and from South Carolina points from which specific rates are not carried to Rutherfordton, it applies a scale corresponding to the Coast Line Virginia-Carolina interstate scale.

The Winston-Salem Southbound applies the intrastate log-rate scale prescribed by the North Carolina Corporation Commission increased 25 per cent in accordance with general order No. 28 of the Director General of Railroads. It alleges that through error this intrastate scale was included in its interstate local tariff, but that steps to correct this error are now being taken whereby class-P rates will be applicable on interstate traffic.

The Carolina & Northwestern Railway is applying a mileage scale slightly lower than that of the Southern, but contemplates equalizing it with the Southern scale, hereinafter referred to.

For defendants it is testified that flat cars are scarce; that a large proportion of the cars used are returned empty; that the per diem charges paid for the use of the cars are large; and that the per car revenue is less than on sand, gravel, clay, slag, manure, and other similar low-grade articles. It is also asserted that the price of logs and of veneer manufactured therefrom has increased enormously in the last four years, and that the freight charges, which have not increased to the same extent, contribute a very much smaller proportion of the total cost of the logs or of the finished product than theretofore.

Complainants and defendants do not object to the Southern Railway interstate log-rate scale as a single-line scale for the delivering carrier. In *Pierpont Mfg. Co. v. S. Ry. Co.*, 50 I. C. C., 81, we approved substantially the same scale.

The Coast Line and the Seaboard do not get the benefit of the outbound movements of the veneer cut from these logs. For that reason they urge that rates to their junction points should be slightly higher than the rates of the delivering lines, and that the combination of those rates should be held to be reasonable through rates. The Coast Line suggests for use up to its junctions the Southern Railway scale plus the difference between the gross and the net scales referred to in *May Bros. v. Y. & M. V. R. R. Co.*, 26 I. C. C., 323, increased 25 per cent in accordance with general order No. 28. The position of complainants is that a scale of joint rates should be established by adding an arbitrary over a reasonable one-line scale; and they propose a joint-line scale which averages a little over 0.7 cent higher than the Southern Railway single-line scale. Complainants' proposed scale shows rates for distances between 100 and 400 miles only, inasmuch as the distances involved in this complaint are within that range. The scales proposed by the Coast Line and complainants and the Southern Railway scale are set forth below:

Miles.	Single-line scale to junctions proposed by Coast Line.	Joint-line scale proposed by complainants.	Southern Railway single-line scale minimum 40,000 pounds.	Miles.	Single-line scale to junctions proposed by Coast Line.	Joint-line scale proposed by complainants.	Southern Railway single-line scale minimum 40,000 pounds.
100.....	6.5	6.75	5.5	260.....	12.5	10.75	10.5
110.....	7	7	5.5	270.....	12.5	11	10.5
120.....	7.5	7.25	6	280.....	13	11.25	11
130.....	8	7.5	6.5	290.....	13.5	11.5	11.5
140.....	8	7.75	6.5	300.....	13.5	11.75	11.5
150.....	8.5	8	7	310.....	13.5	12	12
160.....	8.5	8.25	7	320.....	13.5	12.25	12
170.....	9	8.5	7.5	330.....	13.5	12.5	12
180.....	9.5	8.75	8	340.....	13.5	12.75	12
190.....	9.5	9	8	350.....	13.5	13	12.5
200.....	10	9.25	8.5	360.....	13.5	13.25	12.5
210.....	10.5	9.5	9	370.....	13.5	13.5	13
220.....	10.5	9.75	9	380.....	13.5	13.75	13
230.....	11	10	9.5	390.....	13.5	14	13
240.....	11	10.25	9.5	400.....	13.5	14.25	13
250.....	11.5	10.5	10				

We find that the rates assailed on poplar and gum logs from and to the points under consideration are and for the future will be unreasonable for single-line application to the extent that they exceed or may exceed the following scale of rates, in cents per 100 pounds, including the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220:

	Cents.		Cents.
100 miles-----	7	260 miles and over 250-----	12.5
110 miles and over 100-----	7	270 miles and over 260-----	13
120 miles and over 110-----	7.5	280 miles and over 270-----	13.5
130 miles and over 120-----	8	290 miles and over 280-----	13.5
140 miles and over 130-----	8.5	300 miles and over 290-----	14
150 miles and over 140-----	9	310 miles and over 300-----	14
160 miles and over 150-----	9	320 miles and over 310-----	14.5
170 miles and over 160-----	9.5	330 miles and over 320-----	15
180 miles and over 170-----	10	340 miles and over 330-----	15
190 miles and over 180-----	10.5	350 miles and over 340-----	15.5
200 miles and over 190-----	11	360 miles and over 350-----	15.5
210 miles and over 200-----	11	370 miles and over 360-----	16
220 miles and over 210-----	11.5	380 miles and over 370-----	16
230 miles and over 220-----	12	390 miles and over 380-----	16.5
240 miles and over 230-----	12	400 miles and over 390-----	16.5
250 miles and over 240-----	12.5		

For joint-line application over two or more lines not more than 2.5 cents per 100 pounds should be added to the above scale of rates.

The scale of rates found reasonable for single-line application is substantially the Southern Railway scale, but the scale shown above has been constructed upon a more uniform rate of progression to remove the inconsistencies that now exist in the Southern Railway scale.

Complainants confine their request for reparation to those instances where the through rates charged exceeded the lowest available combination on unrouted shipments. Their contentions in this respect are based upon certain so-called "billet" rates stated in amounts per cord of 128 cubic feet, carload minimum 8 cords. The South Carolina interstate local class and commodity tariff of the Seaboard provides that:

The rates named herein on Hardwood Billets will apply on Billets, Hardwood, viz.: Red Gum, Persimmon, Dogwood, Ash, Hickory, Oak, Poplar Logs and Billets, in the round, carload.

In the "List of commodities in tariff" the index shows "Poplar Logs," "For rates see Hardwood Billets." The wording of this tariff clearly indicates its legal applicability on poplar logs and not on gum logs. In the tariff of the Coast Line, however, a comma is inserted between the words "poplar" and "logs," thereby making the rates named legally applicable on logs of the several kinds of wood named in the tariff item. Defendants assert that these "billet"



rates were the result of an order of the South Carolina Railroad Commission and were not intended to be applied on logs; that all the circumstances surrounding the establishment of these "billet" rates show that they were designed for application on billets only; and that they are not applied on logs moving either intrastate or interstate. We have repeatedly said that, whatever may have been the intention of the framers, a tariff is to be construed according to its terms. *Cancellation of Joint Class Rates from T. & W. R. R. Co.*, 59 I. C. C., 122.

We are not convinced on this record that any lower rates would have been reasonable on the shipments that moved prior to August 26, 1920, than the maximum scale herein prescribed after making appropriate deductions therefrom for the general increase effective on that date. Complainants do not ask reparation on the basis of the scale of rates prescribed for the future. In many instances the aggregates of intermediates were lower than the tariff rates applicable on the shipments, but the rates in the maximum scale herein found reasonable are less than 125 per cent of the aggregate of intermediates. In the instances last referred to we find that where combinations of interstate rates existed over the routes of movement lower than the through tariff rates charged, the rates charged were unreasonable to the extent that they exceeded the lower combinations; that where, in the absence of through rates or a specific manner of constructing through rates the combination rates charged exceeded lower combinations of legally applicable interstate rates over the route of movement, the shipments were overcharged to the extent that the rates charged exceeded the lower combinations; that on unrouted shipments where lower combinations of legally applicable interstate rates were available over routes other than the route over which the rate charged applied, the shipments were misrouted; that complainants made shipments as described and paid and bore the charges thereon at the rates in excess of those which would have accrued at the lower combinations of interstate rates referred to; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at said lower combinations; and that they are entitled to reparation, with interest. The amount of reparation due can not be determined on this record. The record does not suffice to determine the weight of logs measured by the cord. Complainants should comply with rule V of the Rules of Practice.

An order for the future will be entered.

No. 12016.

SAN DIEGO &amp; ARIZONA RAILWAY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted March 19, 1921. Decided July 1, 1921.

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Rate on motor cars, dead, on their own wheels, from Minneapolis, Minn., to San Diego, Calif., found unreasonable. Reparation awarded.

*V. F. Bennett* for complainant.

*C. W. Camp* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Complainant is the successor in interest of the San Diego & South Eastern Railway Company, and purchased the properties of that company on August 1, 1917. By complaint filed December 8, 1920, it alleges that the rate charged on two gasoline motor cars, dead, on their own wheels, shipped October 26, 1916, from Minneapolis, Minn., to San Diego, Calif., was unjust and unreasonable. The prayer is for reparation only.

The cars were moved over defendants' lines. They weighed 196,460 pounds, and charges were collected in the sum of \$3,379.09, based on the applicable rate of \$1.72 per 100 pounds. A rate of \$547 per car applied in the opposite direction, and on February 11, 1918, was established from Minneapolis to San Diego over the route of movement, in compliance with a request made some time prior thereto by complainant.

Defendants, by stipulation filed at the hearing, admit that the rate charged was unreasonable to the extent that it exceeded \$547, but contend that we are without jurisdiction to award reparation on the ground that the action was not begun by complainant within the statutory two-year period in effect when the shipments moved. Section 206 (f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation before us for causes of action arising prior to federal control. Excluding that period from the

computation, the complaint was filed within two years from the time the cause of action accrued, and the claim is not barred. *Ryan Fruit Co. v. S. P. Co.*, 60 I. C. C., 733, 736, and cases there cited.

We find that the rate assailed was unreasonable to the extent that it exceeded \$547 per car; that the San Diego & South Eastern Railway Company made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that complainant, San Diego & Arizona Railway Company, or other lawful successor in interest of the San Diego & South Eastern Railway Company, is entitled to reparation in the sum of \$2,285.09, with interest.

An appropriate order will be entered.

62 I. C. C.

No. 11943.

CAPITAL ICE &amp; STORAGE COMPANY ET AL.

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY.

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Submitted April 20, 1921. Decided July 1, 1921.

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Rates applicable on ice, in carloads, from Carthage and Joplin, Mo., to Oklahoma City, Okla., found unlawful and unreasonable. Reparation awarded and reasonable maximum rate prescribed.

*H. D. Driscoll* for complainants.

*M. G. Buffington* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, the Capital Ice & Storage Company and the Big Four Ice Delivery Company, are corporations manufacturing ice at Oklahoma City, Okla. They allege that the rates charged on 21 carloads of ice, shipped during July and August, 1920, from Carthage and Joplin, Mo., to Oklahoma City, were unreasonable, unduly prejudicial, and in violation of the fourth section of the interstate commerce act. We are asked to award reparation and to establish just and reasonable rates for the future. Rates will be stated in cents per 100 pounds.

One shipment weighing 61,200 pounds moved from Carthage, 256.3 miles, and the others, aggregating 870,240 pounds, from Joplin, 237.3 miles. Aggregate charges of \$1,664.84 were collected at actual weights and rates of 16.5 cents from Carthage, 15 cents on 15 shipments from Joplin, and 26.5 cents on the remainder. Class-E distance rates of 28 and 26.5 cents, increased after the movement to 38 and 36 cents, minimum 40,000 pounds, were applicable. Certain of the shipments were undercharged. We are asked to sanction waiver of collection of outstanding undercharges, to award reparation in the sum of \$453.97 based on a rate of 13 cents, and to prescribe a rate of 17.5 cents for the future.

When these shipments moved defendant and other carriers maintained a distance scale of commodity rates between points in Kansas

and Missouri on the one hand and points in Oklahoma on the other, and this scale, as subsequently increased, is still in effect. For convenience it will be referred to as the Missouri-Oklahoma scale. The scale ends at 230 miles. The rates in effect before and after August 26, 1920, are shown by complainants' exhibits as follows:

Distances.	Prior to Aug. 26, 1920.	Effective Aug. 26, 1920.	Distances.	Prior to Aug. 26, 1920.	Effective Aug. 26, 1920.
5 miles and under .....	5	7	100 miles and over 75 miles...	9	12
10 miles and over 5 miles.....	5	7	125 miles and over 100 miles...	9.5	13
20 miles and over 10 miles.....	5	7	150 miles and over 125 miles...	10.5	14
25 miles and over 20 miles.....	5	7	175 miles and over 150 miles...	11.5	15.5
50 miles and over 25 miles.....	6.5	9	200 miles and over 175 miles...	12	16
75 miles and over 50 miles.....	7.5	10	230 miles and over 200 miles...	12.5	17

The carload minimum thereunder is 36,000 pounds. If the scale in effect when the shipments moved were extended at the same rate of progression from 230 to 260 miles as applied from 200 to 230 miles the rate for the distances over which the shipments moved would be 13 cents, as claimed by complainants. The corresponding rate under the scale as subsequently increased would be 17.5 cents, the rate sought for the future.

When the shipments moved combination rates from Carthage and Joplin to Oklahoma City, basing on numerous intermediate points and constructed by using the rates of the Missouri-Oklahoma scale as the factor to or beyond the basing points, were materially lower than the applicable class-E rates. Thus rates of 6.5 and 4 cents applied from Carthage and Joplin, respectively, to Galena, Kans., and a rate of 12.5 cents beyond, applicable under the Missouri-Oklahoma scale, aggregating 19 cents from Carthage and 16.5 cents from Joplin. The present rates likewise exceed the aggregates of the intermediates in many instances. These deviations from the fourth section are not protected by appropriate fourth section applications, and were and are unlawful.

Rates of 12.5 and 14 cents applied prior to August 26, 1920, from and to a number of points in this territory, for distances ranging from 205 to 399 miles. When the shipments moved, distance commodity scales materially lower than the class-E basis were maintained by a number of carriers in the southwest, including defendant. The scales maintained by the Kansas City Southern between Arkansas and Louisiana, and intrastate in Louisiana, also by carriers generally intrastate in Arkansas, were substantially the same as the Missouri-Oklahoma scale. These various rates, except to the extent that they were changed by the increases authorized by us on July 29, 1920, are still in effect. Until canceled, shortly prior to the movement, a scale of distance commodity rates which average

slightly higher than the Missouri-Oklahoma scale applied for distances as high as 350 miles over lines not under federal control between points in Kansas and Missouri on the one hand and points in Oklahoma on the other.

No defense was offered. Defendant's representative stated that he was not advised why the Missouri-Oklahoma scale "was stopped at 230 miles for class-A roads and carried out to 350 miles for non-controlled lines," and that this carrier has filed with the Southwestern Freight Bureau a proposal to extend that scale to a distance of 300 miles at the rate of progression now employed.

Two of the shipments on which reparation is sought were assigned to complainant Capital Ice & Storage Company and the remainder to complainant Big Four Ice Delivery Company. The two shipments were made for account of the complainant last named, which paid and bore the charges thereon. The other complainant has assigned to it all interest in any reparation that may be awarded herein.

We find that the applicable rates were unreasonable to the extent that they exceeded 13 cents per 100 pounds, minimum 36,000 pounds, and that the present rates are and for the future will be unreasonable to the extent that they exceed or may exceed 17.5 cents per 100 pounds, same minimum. We further find that the shipments were made as described; that complainant Big Four Ice Delivery Company paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$453.97, with interest. This takes into account the outstanding undercharges.

An appropriate order will be entered.

62 I. C. C.

GENESEE & WYOMING RAILROAD COMPANY.  
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF  
RAILROAD SERVING INDUSTRIES.

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INVESTIGATION AND SUSPENSION DOCKET No. 414.  
CANCELLATION OF RATES IN CONNECTION WITH  
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-  
CATION TERRITORY.

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*Submitted July 14, 1919. Decided June 11, 1921.*

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The Genesee & Wyoming Railroad Company found to be a common carrier subject to the interstate commerce act which may lawfully participate in joint interstate rates with its trunk line connection. Its divisions must be no more than reasonable, and a complete and specific statement of the arrangements entered into must be filed with the Commission immediately upon their consummation.

*Adelbert Moot* for Genesee & Wyoming Railroad Company.  
*H. A. Taylor* for Erie Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By Division 3:

The portion of this proceeding now before us presents the question whether the Genesee & Wyoming Railroad Company, hereinafter called the Genesee, is a common carrier subject to the interstate commerce act, and whether it may lawfully receive divisions of joint rates on interstate shipments. A questionnaire addressed to the Genesee on May 29, 1919, designed to elicit information as to any changes which had taken place in the physical properties, manner of operation, compensation received, or other pertinent matters since the original hearing, and the response thereto made by the Genesee have been made a part of the record with its consent and that of its trunk line connections.

The Genesee was incorporated March 22, 1899, with an authorized capital stock of \$500,000. At the time of the hearing, in 1914,

2,887 out of the 5,000 Genesee shares were owned by stockholders of the International Salt Company, which owns the Retsof Mining Company, the principal industry served by the Genesee. The president of the salt company was also president of the Genesee and owned 2,055 of its shares. His salary from the railroad was \$5,000, but he devoted very little of his time to its business.

The Genesee is located near Rochester in the state of New York and extends from a point called Pittsburgh & Lehigh Junction to Greigsville, with two branch lines from Retsof, one to Halite and one to Retsof Junction, its connection with the Pennsylvania. It operates 17.03 miles of main track and 7.04 miles of spurs and sidings. It leases 3.20 miles of main track to Halite and 1.05 miles of spurs and sidings, and owns the remainder. The leased tracks are owned by the Halite & Northern Railroad Company, which receives as compensation 14.75 cents per net ton on all traffic moved over the leased tracks. The Halite & Northern is controlled by the Sterling Salt Company, located at Halite, which is not affiliated with the Genesee and which is also served by the Pennsylvania. The arrangement appears to have been profitable for the Halite & Northern and to have increased correspondingly the expenses of the Genesee.

The Genesee has stations at several points on its line. It operates seven locomotives, one passenger car, one company service car, and one caboose, all of which it owns except one locomotive included in the lease from the Halite & Northern. On December 31, 1918, the amount carried on the books as investment in road and equipment was \$1,106,885.06, less accrued depreciation of \$34,272.61. On June 30, 1915, the value of the property as estimated by the Genesee was \$447,810.45; and the estimated cost of reproduction, \$518,426.38. All of the property is said to be used in public service.

The average length of haul between industries and junctions with trunk lines is 9.54 miles; and 7 miles between trunk line junctions and team tracks or freight stations. The names of some 24 independent shippers have been furnished by the Genesee. Of the freight service 98 per cent in 1918 was to and from industries, 1.5 per cent to and from team tracks or stations, and 0.5 per cent less-than-carload traffic. Three cars were switched between trunk lines and 683 cars in plant and interplant service. There is no separation of traffic as between controlling or affiliated companies and independent industries, it being claimed that there are no controlling or affiliated industries. The passenger revenue was \$1,001.76 and the express revenue \$143.27. There was no revenue from mail service. It is estimated that 60 per cent of all the traffic moved in interstate commerce. Bills of lading and waybills are issued and tariffs and annual reports are filed with us.



The Genesee receives \$2 per car for plant and interplant switching. Its charges are \$3.50 per car for switching between the Erie and New York Central and connecting lines, and \$7 per car between the Delaware, Lackawanna & Western and connecting lines. It publishes various commodity rates and class rates for local service, the latter ranging from 4 to 14.5 cents per 100 pounds, and the compensation so received is said to be the same as that received by trunk lines in the same rate district for similar services. From Retsof and Halite joint rates are published by the Genesee and its trunk line connections. On these joint rates it receives divisions from its connections and out of these divisions pays the trackage charge of the Halite & Northern on such of the traffic as moves over the leased line. Its annual report for 1918 shows:

Railway operating revenues.....	\$427, 210. 99
Railway operating expenses.....	178, 659. 00
Net revenue from railway operations.....	250, 551. 99
Railway tax accruals.....	18, 437. 69
Railway operating income.....	237, 113. 70

During the year \$24,400 was paid as interest at 5 per cent on \$488,000 of bonds; dividends amounting to \$50,000, or 10 per cent upon the capital stock of \$500,000, were declared; and \$58,747.33 was transferred to the profit and loss account.

The annual reports of the Genesee for the five-year period from July 1, 1912, to June 30, 1917, inclusive, show average annual earnings available for the payment of interest and dividends equal to 7.65 per cent on the reported cost of road and equipment plus materials and supplies less reserve for accrued depreciation. Using as a basis the \$518,426.38 estimated by the Genesee to be the cost of reproduction new on June 30, 1915, these average earnings were more than 15 per cent.

The same annual reports show also that the compensation paid to the Halite & Northern for the use of its tracks averaged \$35,000 per year, or about 36 per cent of the average reported cost of the latter's property. The annual reports of the Halite & Northern show that it paid from July 1, 1913, to June 30, 1917, inclusive, dividends amounting to \$77,000, or 77 per cent on its capital stock, accumulating in addition a surplus of \$32,470.94 out of the \$51,179, which was its accumulated surplus on June 30, 1917.

The Genesee is not a member of the American Railroad Association; none of its equipment is interchanged with connecting lines, and it does not receive per diem reclaims. It collects demurrage for itself and settles with the trunk lines on a per diem basis, paying \$39,787 in 1918. It has average demurrage agreements with the Sterling Salt Company and the Retsof Mining Company.

We find that the Genesee is a common carrier subject to the interstate commerce act and may lawfully participate in joint interstate rates with its trunk line connections and receive divisions therefrom. The present record does not afford a basis for stating the amounts which it may properly receive; but the divisions must not be more than are reasonable. In arriving at divisions to be paid to the Genesee the trunk lines should take into consideration what would be a reasonable rental for the property leased from the Halite & Northern. The parties should file a complete and specific statement of any arrangements entered into immediately upon their consummation.

We have in former cases pointed out that the payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries. Upon consideration of the record we find in accordance with our holding in *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551, that the per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars.

We further find that the following arrangement between the Genesee & Wyoming Railroad and its trunk line connections with respect to the detention of foreign cars on the line of the former will be reasonable and proper for the future.

The Genesee & Wyoming Railroad and the respondent trunk lines connecting with the Genesee & Wyoming Railroad shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59 providing for assessment of charges for use and detention of cars except those at home on the tracks of the Genesee & Wyoming Railroad or the industries located thereon against the Genesee & Wyoming Railroad at the contemporaneous demurrage rates on cars delivered loaded and returned empty or delivered empty and returned loaded after the expiration of 72 hours' free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track; except that when, through no fault of the delivering line, such placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial carrier, such notice to contain a statement of point of shipment, car initials

and numbers, car contents, consignee, and if transferred in transit the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car, and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first eight days; in no case shall more than two credits be allowed accruing on any one car, nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named, charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty, charges for use and detention of cars at the contemporaneous demurrage rates per car per day or fraction of a day shall be collected, after the expiration of 24 hours' free time.

Under this arrangement shippers located on the Genesee & Wyoming Railroad would be accorded the same treatment in the matter of demurrage as those located on the lines of other common carriers, and the Genesee & Wyoming Railroad would be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between other lines and the industries served by them.

An appropriate order will be entered in No. 4181. No order is necessary in Investigation and Suspension Docket No. 414.

## INVESTIGATION AND SUSPENSION DOCKET No. 1332.

## RAIL-AND-WATER RATES ON PLASTER FROM SOUTHARD, OKLA., TO NEW YORK AND BROOKLYN, N. Y.

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*Submitted June 4, 1921. Decided July 18, 1921.*

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Proposed cancellation of joint rail-and-water rate on cement plaster, in carloads, from Southard, Okla., and points grouped therewith, to New York and Brooklyn, N. Y. (Gulf Line piers only), found not justified. Suspended schedules ordered canceled and proceeding discontinued.

*W. S. Merchant* for respondents.

*W. D. Lindsay* for protestant.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

By schedules filed to become effective May 10, 1921, the St. Louis-San Francisco Railway Company, hereinafter called respondent, proposes to cancel its joint rail-and-water rate on cement plaster, in carloads, from Southard, Cement, Ideal, and Okeene, Okla., to New York and Brooklyn, N. Y. (Gulf Line piers only), applicable via Galveston, Tex., and the Morgan or Mallory steamship lines beyond, and to apply combination rates. Upon protest of the United States Gypsum Company, which has a plant at Southard, the operation of the schedules was suspended until September 7, 1921.

The present joint rail-and-water rate through Galveston from Southard and grouped points to New York and Brooklyn (Gulf Line piers only) is 42 cents per 100 pounds; the combination which would become applicable via Galveston from Southard to New York (Gulf Line piers only) is 50 cents, based on Acme, Tex.; to Brooklyn a lighterage charge of 7 cents would be added, a total of 57 cents.

Respondent introduced no evidence in justification of the proposed cancellation.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 11885.  
WEST KENTUCKY COAL BUREAU  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted May 18, 1921. Decided July 22, 1921.*

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Rates on coal, in carloads, from western Kentucky to points in southeastern Missouri and northeastern Arkansas found unduly prejudicial to complainant's members and unduly preferential of mine operators in southern Illinois. Basis for the removal of such prejudice and preference prescribed.

*Norman & Graham* for complainant.

*A. U. Tadlock* for Jonesboro (Ark.) Freight Bureau, intervener.

*A. P. Humburg* for all defendants; *B. J. Rowe* for Illinois Central Railroad Company and St. Louis Southwestern Railway Company; *G. H. Kummer* for Chicago & Eastern Illinois Railroad Company and receiver; and *H. E. Morris* for St. Louis-San Francisco Railway Company.

*F. H. Harwood* and *Clarence B. Cardy* for Illinois Coal Traffic Bureau and *R. W. Ropiequet* for Illinois Coal Operators' Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*Esch, Commissioner:*

A report was proposed by the examiner, exceptions were filed by complainant, defendants, and intervener Illinois Coal Traffic Bureau, and oral argument has been had thereon.

Complainant, an association of coal-mine operators in western Kentucky, assails as unreasonable and unduly prejudicial the rates on coal, in carloads, from mines on the Illinois Central in that district to destinations in southeastern Missouri and northeastern Arkansas. We are asked to prescribe joint through rates not more than 25 cents per ton higher than the rates contemporaneously maintained by defendants from mines in the southern Illinois coal fields. The Jonesboro, Ark., Freight Bureau intervened in support of the complaint, and the Illinois Coal Traffic Bureau and Illinois Coal Operators' Association in opposition to the differential sought by complainant. Rates are stated herein in amounts per ton of 2,000 pounds.

The western Kentucky coal district meets its keenest competition in surrounding markets from the southern Illinois fields. Both districts are served largely by the Illinois Central, the Kentucky coal from the east and the Illinois coal from the north converging at the Thebes, Ill., crossing of the Mississippi River, where it is delivered to the Chicago & Eastern Illinois or the St. Louis Southwestern for distribution, in conjunction with the St. Louis-San Francisco and other lines, to the destination territory named. The southern Illinois fields are also reached direct by the Chicago & Eastern Illinois. The destination area embraces all points served by defendants west of the Mississippi River and on or east of the line of the St. Louis-San Francisco from Festus, Mo., through Cape Girardeau, Brownwood, and Poplar Bluff, Mo., and Hoxie and Jonesboro, Ark., to Marion, Ark. As shown by complainant the unweighted average distance over the Illinois Central from the western Kentucky mines to Thebes is 163.5 miles, and from the southern Illinois group, as defined in Illinois Central tariff No. 3010, I. C. C. No. E-1493, which includes the Belleville and the Centralia groups, 86.3 miles, while the similarly computed distance from Thebes to the various points of destination in Missouri and Arkansas is shown as 86.5 miles, totaling 250 miles and 172.8 miles, respectively, or an average difference in distance between the two districts of 77.2 miles. As computed by defendants and intervener Illinois Coal Traffic Bureau, the difference in average distances is 86.5 miles. The mines in each of the two districts are grouped for rate-making purposes to points beyond Thebes.

The rates from southern Illinois to this region are joint through rates which were originally established by the St. Louis-San Francisco and the Chicago & Eastern Illinois when they were operated as a single system, while those from western Kentucky have always been based on combinations on East St. Louis, Ill., Thebes, or Memphis, Tenn. The rates from western Kentucky vary from \$3.355 to \$5.43 for the various hauls, and from southern Illinois from \$1.485 to \$3.645. The minimum difference to any one point is \$0.975 and the maximum difference \$2.055. The average difference is \$1.60, the average rates being \$4.47 from western Kentucky mines and \$2.87 from southern Illinois mines for the distances computed above of 250 miles and 172.8 miles, respectively. This indicates unweighted average earnings from the former of 17.9 mills per ton-mile and 16.6 mills from the latter, or higher ton-mile earnings for the longer distance. While the minimum difference in rates occurs at Algoa, Ark., the most distant point from both districts, the maximum difference occurs at points about two-thirds the greatest distance, and the

average difference at the nearest points. A uniformly applied differential would tend to correct such irregularities.

In *Ohio Valley Coal Operators' Assn. v. I. C. R. R. Co.*, 53 I. C. C., 148, a differential of 25 cents on western Kentucky coal over that from southern Illinois was established to Mattoon and Decatur, Ill., and points north and northwest thereof, involving a difference in distance of 88 miles to Mattoon and 121 miles to Decatur, the route from western Kentucky being through Evansville, Ind. On traffic to East St. Louis, St. Louis, Mo., and points beyond a differential of 42.5 cents resulted from another finding in the same case, the difference in distance here being approximately 177 miles via the Illinois Central.

Defendants contend that, if the establishment of joint through rates is required, they should be based on a differential of 42.5 cents over the rates from southern Illinois, corresponding to the differential established to East St. Louis, St. Louis, and points beyond. The differences in distance for which the 25-cent differential was established on traffic to and beyond Mattoon and Decatur correspond more closely to the difference in distances here involved, and, although the traffic under consideration moves through Cairo, Ill., no reason is shown for any higher differential on traffic through Cairo than through Evansville.

Intervener Illinois Coal Traffic Bureau contends that the differential should be not less than 50 cents per ton, in support of which it urges that western Kentucky could compete with southern Illinois on that basis. The differential must, however, be established with reference to the difference in transportation service from the two districts.

The 25-cent differential on traffic to and beyond Decatur and Mattoon was established after careful consideration of the difference in transportation service involved; it is conceded that there has been no material change in the relative conditions of transportation from the two districts; and we are convinced that the same differential should be applied to the traffic now under consideration.

We find that the rates assailed are and for the future will be unduly prejudicial to complainant's members and unduly preferential of coal-mine operators in southern Illinois, to the extent that they exceed, or may exceed, by more than 25 cents per ton of 2,000 pounds the rates contemporaneously maintained by defendants on like traffic from the southern Illinois group as defined in Illinois Central tariff No. 8010, I. C. C. No. E-1493, to the same destinations.

An appropriate order will be entered.

No. 11248

DODGE BROTHERS, INCORPORATED, FOR THE BENEFIT OF N. V. VELONDROME, LIMITED, AND LEVY HERMANOS,

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted September 14, 1920. Decided June 30, 1921.*

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Demurrage and storage charges assessed at San Francisco, Calif., on carload shipments of motor cars consigned under through export bills of lading from Detroit, Mich., to the Philippine Islands and Java, found not illegal, unreasonable, or unduly prejudicial. Complaint dismissed.

*H. O. Lust and Preston G. Findlay* for complainant.

*James L. Coleman and F. E. Andrews* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS HALL, POTTER, AND ESCH.

BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing motor cars at Detroit, Mich. By complaint seasonably filed, as amended, for the benefit of N. V. Velondrome, Limited, and Levy Hermanos, it is alleged that demurrage and storage charges which accrued on 19 carloads of motor cars at San Francisco, Calif., while awaiting loading into vessels for export, were illegal, unreasonable, and unduly prejudicial. We are asked to award reparation.

The shipments were made from Detroit between January 11 and March 7, 1918, consigned under "order-notify" bills of lading to the order of complainant at the respective foreign destinations. The parties there to be notified, and the shipments intended for and ultimately received by them respectively, were: Levy Hermanos, at Manila, Philippine Islands, 7; and N. V. Velondrome, Limited, at Samarang, Batavia, and Soerabaya, Java, 12. As a war measure, complainant was required to secure through the terminal rail carriers permits for the inland movement of shipments for export. These were not issued until cargo space had been reserved. Inland and through export bills of lading were issued specifying the vessels on which space had been reserved.



The military needs of the country caused by the war impelled the government to commandeer for military purposes neutral vessels of foreign register found within its territorial jurisdiction. Among the vessels so taken over were those on which complainant had booked cargo space. Upon learning of this, complainant requested the carriers to divert to north Pacific ports such of its export shipments as had not passed certain points, but nevertheless these 19 carloads reached San Francisco, 10 over the Atchison, Topeka & Santa Fe, and 9 over the Southern Pacific. Three cars arrived in February, 15 in March, and 1 in May. At all times during the rail movement the defendant carriers over whose lines these shipments moved were under federal control, exercised through the Director General of Railroads.

The demurrage tariff applicable to this export traffic provided that when shipments were not forwarded on the vessel in which space had been reserved, due to failure of the vessel to make its scheduled sailing, free time to unload would be allowed to the first 7 a. m. following the scheduled sailing date of the vessel, but not less than 10 days, computed from the first 7 a. m. after arrival at port of exit, or after the date on which the carrier was ready to make delivery at port of exit, when advance notice of such date was given to the party to be notified at port of exit; and that after expiration of the free time demurrage would be charged at \$3 per car per day or fraction thereof. While complainant was endeavoring to secure cargo space on other vessels, the contents of most of the cars were unloaded and stored in order to release the equipment. During the period of storage detention charges at the demurrage rate were assessed in conformity with the governing tariff. Complainant secured space for these shipments on steamships which cleared from San Francisco at various dates during April, May, June, and principally in July. There accrued and were assessed demurrage and storage charges aggregating \$3,272.55, including war taxes, which were paid by complainant, who charged the same to the foreign dealers in behalf of whom it brings this complaint.

Complainant contends that the shipments were detained at San Francisco as a result of the action of the government in commandeering the vessels on which it had booked cargo space, and that no demurrage should have been assessed or collected during the time when the lines of the defendant carriers were being operated by a federal agency. It insists that the detention was not occasioned by any act or default on the part of the shipper or consignee, and urges that it was unfair to charge for the services incident to the detention.

So-called through export bills of lading, as explained in *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 23 I. C. C., 417, 425, are in fact two distinct contracts, one on the part of the railroads for the carriage to the port and the other on the part of the ocean line for the carriage from the port. The Director General, through his agents, performed the contract of rail transportation, and he was not responsible for the detention. The complainant retained and exercised the right to direct reconsignment, and disposition at the port of exit.

Complainant urges that the tariff provisions for demurrage in the event of delay to carload shipments, due to failure of a vessel to make a scheduled sailing, mean the ordinary failure due to wreck, storm, strike, or the act of a foreign government, but that this detention was due to an act of our government, and not to failure of the vessel to make a scheduled sailing within the meaning of the tariff. The tariff does not limit the causes which may contribute to such failure.

Complainant further contends that it was unreasonable to assess storage charges upon the same basis as demurrage charges, where the shipments were unloaded and stored for the convenience of the carrier; that demurrage is primarily a penalty for the detention of equipment, and when applied to the service of storing goods is unreasonable; and that it is unreasonable to make charges for storage when goods are not actually stored, but are merely placed in a secure position on the carrier's property outside its storage sheds, as were some of the shipments here considered.

The tariff under which the charges in question were assessed provided that when freight for ocean movement on which a demurrage charge was applicable was unloaded and stored by the carriers for the purpose of releasing equipment, a charge of \$3 per day or fraction thereof would be assessable for each carload to cover the expense of unloading, storage, insurance, and reloading into cars. A storage charge equivalent to a demurrage charge is not, *ipso facto*, unreasonable. *Barber & Co. v. C., C. & St. L. Ry. Co.*, 51 I. C. C., 194; *Levering Bros. v. P., B. & W. R. R. Co.*, 38 I. C. C., 349. Carload rates are almost always made upon the condition that the shipper and consignee will load and unload the freight, and upon the theory that the freight will not pass through the carrier's warehouse.

One of the reasons advanced by complainant against the imposition of the storage charge is that some of the shipments were stored upon the carriers' right of way instead of in their warehouses. This was necessitated by the congested condition of the warehouses. The carriers' responsibility for the safety of the freight was not altered by that fact.

Complainant also urges that it was unduly prejudicial to assess demurrage and storage on export shipments at San Francisco, whereas like charges were not applicable on similar shipments at north Pacific coast ports, including Albina, East Portland, and Portland, Oreg., Seattle and Tacoma, Wash., and Vancouver and Prince Rupert, British Columbia.

The fact that charges of this character are imposed at one port, such as San Francisco, and not at others, such as the north Pacific coast ports, does not of itself constitute undue prejudice. *N. Y. Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C., 178; *Advances in Demurrage Charges*, 25 I. C. C., 314.

Upon this record we find that the demurrage and storage charges assailed were not illegal, unreasonable, or unduly prejudicial.

The complaint will be dismissed.

POTTER, *Commissioner*, dissenting:

I do not agree with the conclusion of the majority. It is my view that the government was responsible for the detention of the shipments in question and that, for the reasons stated in my dissent in *American Smelting & Refining Co. v. Director General*, 62 I. C. C., 583, no demurrage accrued.

62 I. C. C.

No. 11788.  
CHEVROLET MOTOR COMPANY OF CALIFORNIA  
v.  
DIRECTOR GENERAL, AS AGENT, UNION PACIFIC  
RAILROAD COMPANY, ET AL.

Submitted April 23, 1921. Decided July 1, 1921.

Rate charged on so-called wiring harness included in carload shipments of starting devices from Toledo, Ohio, to Oakland, Calif., found illegal. Refund directed and complaint dismissed.

*Frank A. Gaynor and John Thomas Smith* for complainant.

*Robert W. Fyfe and W. E. Prendergast* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing automobiles at Oakland, Calif., alleges that the rates applied on so-called wiring harness included in carload shipments of starting devices from Toledo, Ohio, to Oakland after February 3, 1917, were and are unreasonable, unjustly discriminatory, and unduly prejudicial in that they exceeded and exceed the class-A rate applicable on electric starting devices, in carloads. We are asked to award reparation; to establish reasonable rates for the future; and to prescribe a tariff item covering starting devices including motors, ammeters, circuit breakers, starting switches, and wiring harness, carload minimum 30,000 pounds.

A commodity rate prior to March 15, 1918, and the class-A rates thereafter, minimum 30,000 pounds, were applicable on starting devices and gasoline-engine starters. First-class rates were applicable on electrical appliances, n. o. i. b. n., any quantity. First-class rates were applied to the actual weight of the wiring harness included in the shipments.

The latter commodity as shipped consisted of various wires, some of which are essential to the starting of an automobile engine and some of which are merely used to connect the lighting system. There are various types of starting devices, and what constitutes each type depends largely upon the units ordinarily used in assembling it.

Defendants should name the units which they intend to include in the commodity description. The descriptions used were sufficiently broad to cover all the necessary parts constituting a starting device or a gasoline-engine starter.

We find that the rates on starting devices and gasoline-engine starters were applicable to wiring harness and other parts constituting such devices and starters; that the charges collected were illegal to the extent that they exceeded those collectible at rates herein found applicable; and the overcharges should be promptly refunded, with interest. The record is insufficient to warrant a finding of unreasonableness, unjust discrimination, or undue prejudice.

An order dismissing the complaint will be entered.

62 I. C. C.

No. 11781.  
CITIZENS COAL MINING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

— — — — —  
*Submitted April 25, 1921. Decided July 1, 1921.*  
— — — — —

Rates on soft coal, in carloads, from complainant's mines A and B near Springfield, Ill., to Springfield, during federal control, found unreasonable. Reparation awarded.

*S. B. Houck* for complainant.

*P. B. Warren* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation mining coal in Illinois, by complaint filed August 12, 1920, as amended, alleges that the rates charged on 96 carloads of soft coal shipped from its mines A and B near Springfield, Ill., to Springfield, during July, August, and September, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is asked. Rates and charges will be stated in amounts per net ton, except as otherwise indicated.

Complainant's mines are about 1 mile outside the city limits of Springfield. During federal control the Springfield switching limits were extended so as to embrace these mines. They are served by the Chicago, Peoria & St. Louis, hereinafter called defendant. The shipments moved over that road to its connection with the Wabash within the city limits of Springfield, and were delivered by the latter carrier at a switching charge of \$5 per car, which is not attacked.

For some time prior to federal control and until September 10, 1919, a rate of 43 cents applied for defendant's haul from these mines to its connection with the Wabash. This was an intrastate distance scale rate for distances of 4 miles and over 2 miles prescribed by the Public Utilities Commission of Illinois. On the date last mentioned it was increased to 58 cents. Charges were assessed on 81 shipments at the 43-cent rate and on the remaining 15 shipments at the 58-cent rate. On September 19, 1919, subsequent to the movement,

a switching charge of 20 cents was established, minimum \$6.50 per car, and reparation is sought to this basis.

The rates attacked are compared in an exhibit with lower switching charges on soft coal contemporaneously maintained by other carriers, from mines about as far from Springfield as complainant's mines, to connections for delivery at Springfield. The service required under these switching charges appears to be substantially similar to that rendered by defendant under the rate assailed. Charges shown in this exhibit range from 10 to 20 cents, with minima of from \$2 to \$6.50 per car.

A rate of 30 cents on soft coal was contemporaneously maintained by defendant from complainant's mines to Springfield when for delivery on defendant's team tracks. The service required under this lower rate was greater than that in connection with these shipments. It is the general practice of carriers at Springfield to maintain rates requiring team-track delivery, which are higher than, or at least equal to, those maintained to the same point for delivery to connections. Defendant also maintained a rate of 10 cents from complainant's mines to Springfield, when destined to points beyond.

We find that the rates assailed were unreasonable to the extent that they exceeded 20 cents per net ton, minimum \$6.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

62 I. C. C.

No. 10454.

LEAVENWORTH CHAMBER OF COMMERCE

v.

DIRECTOR GENERAL, LEAVENWORTH & TOPEKA  
RAILROAD COMPANY, ET AL.

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*Submitted May 4, 1921. Decided July 15, 1921.*

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1. Increased charges of the Leavenworth & Topeka Railroad for switching interstate shipments to and from team tracks at Leavenworth, Kans., found to be unreasonable to the extent that they exceed \$5 per car.
2. Increased charges of the same line for switching between industries and connecting lines and between connecting lines at the same point found justified as applied to interstate shipments.

*E. Y. Blum, Henry J. Helmers, jr., George N. Brown, W. F. Cobb, and E. D. Lyle* for complainant.

*M. K. Stephens, A. C. Malloy, R. C. Davis, W. H. White, and E. H. Hogueland* for Leavenworth & Topeka Railroad Company; *Kendall Laughlin* for Kansas City Northwestern Railroad Company and *L. S. Cass*, receiver; and *J. C. Burnett, G. H. Hamilton, W. H. Thompson, and J. C. La Coste* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*ESCH, Commissioner:*

In this case there have been three hearings and as many proposed reports issued, to the last of which no exceptions were filed.

The Leavenworth Chamber of Commerce, of Leavenworth, Kans., alleges that since November 10, 1918, the Leavenworth & Topeka Railroad, hereinafter called defendant, has collected unreasonable charges for its switching services at Leavenworth. It also attacked the failure of the other carriers serving Leavenworth to absorb such charges on competitive traffic upon which they received the road haul; but the other carriers now absorb all of defendant's switching charges on competitive traffic, subject to certain conditions, and complainant states that its complaint against the line-haul carriers has been satisfied. Reparation was originally asked on all shipments switched since November 10, 1918, but this request was subsequently waived. The only issue remaining is the reasonableness of defendant's present switching charges, which are borne



by complainant's members on traffic to or from local points on other lines, and complainant's request for the establishment of reasonable charges. Our consideration of such charges will be confined to their application on traffic to or from interstate points.

Most of the industries at Leavenworth are located on Choctaw street between Main street on the east and Seventh street on the west, a distance of 2569.1 feet. Defendant's line extends along Choctaw street, with spurs or sidings which serve the industries, and it performs practically all the switching between such industries and the other lines at Leavenworth, with which it connects on or near Choctaw street, so that its switching movements probably do not exceed 0.5 mile. There are two industries on defendant's rails in South Leavenworth about 1 mile from Choctaw street, to which its switching rates apply, but practically all of the switching to and from those industries is performed by another line. Defendant also switches between its team tracks and connecting lines and from one connecting line to another. The bulk of its switching, however, is to and from the industries on Choctaw street. Switching between industries and connecting lines will be referred to as industry switching, between team tracks and connecting lines as team-track switching, and between connecting lines as intermediate switching. Charges will be stated in amounts per car.

Prior to November 10, 1918, defendant's charge was \$2 for industry, team-track, and intermediate switching at Leavenworth. On that date its charges were increased to \$5 for industry switching; to from \$6 to \$23 for team-track switching, the higher charges varying with the weight of the shipments; and to \$3 for intermediate switching. As defendant was not then under federal control, it is not entitled to the benefit of the President's certificate of need for additional revenue. These increases were permitted by a fifteenth section order entered in April, 1918, but that does not relieve defendant of the burden of justifying the increases. Following *Increased Rates, 1920*, 58 I. C. C., 220, the above charges were further increased approximately 85 per cent on August 26, 1920, but the charges made effective November 10, 1918, were restored on October 28, 1920. Defendant concedes that its switching charges should not exceed \$5.

Defendant's line extends from Leavenworth to Meriden Junction, Kans., 46.5 miles. It was constructed about 35 years ago and was subsequently acquired jointly by the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, and the Union Pacific. These carriers operated it until 1916 when a receiver was appointed who operated the property until June, 1918. During the greater portion of the last six months of the receivership the line-haul service was discontinued, but such service has since been restored. The terminal

service at Leavenworth has been continuous. On June 18, 1918, the property was purchased at a receiver's sale for \$80,000, and the present corporation was formed by merchants, farmers, and others interested in preventing the road from being scrapped. A condition of the sale was that if operation of the road ceased for a period of 50 days, title to it would revert to the former owners. Since the beginning of the receivership the motive power used in performing defendant's switching at Leavenworth has been provided by the Santa Fe, except from September 1, 1918, to November, 1919, when it was furnished by the Chicago, Rock Island & Pacific, hereinafter called the Rock Island. Prior to September 1, 1918, the Santa Fe received \$1 per car for shipments moved for defendant; between that date and November, 1919, the Rock Island received at first \$1 and subsequently \$2 per car for the same service; and since November, 1919, the Santa Fe has performed with its own motive power and crews the physical movements embraced in the switching service of defendant for \$2 per loaded car, and \$1 per empty car not switched by it when loaded.

Complainant contends that the charges assailed should not exceed \$3, in support of which it directs attention to the fact that, as a rule, the reciprocal switching charges of the other carriers at Leavenworth were \$2 at the time the complaint was filed; that the reciprocal switching charges of the same lines at other points in the general vicinity of Leavenworth were generally \$2, ranging up to \$6.50 in some instances; and that the reciprocal switching charges of other lines at St. Joseph and Kansas City, Mo., ranged from \$2 to \$7. Many of these switching charges have since been increased in substantial amounts.

Defendant enumerated its financial difficulties and showed that it has been unable for a long period of years to produce sufficient revenues to meet its operating expenses; that since 1908 its operation has resulted in substantial deficits; and that notwithstanding the additional revenues provided by the charges assailed and increased line-haul rates, and the fact that the present administrative officers donate their services, it is not earning operating expenses.

In justification of the \$5 switching charge, defendant relies largely upon a study made by it of the cost of switching cars at Leavenworth based upon a test for August, 1920, the results of which are set forth in detail in an exhibit. During that month 523 cars were switched, which produced a total revenue of \$2,299.90, \$1,044 of which was paid the Santa Fe for moving the cars. Certain expenses connected with the maintenance of the terminal were allocated to the switching service and others were divided between the switching and line-haul service, based upon the time devoted to each service.

According to defendant's statement the average cost to it of switching cars at Leavenworth in August, 1920, was \$3.93 per car, which does not include interest upon the value of the property devoted to switching service nor depreciation of same. For the first 10 months of 1920 the average monthly receipts from switching were \$2,187.33, and the average monthly expenses incident thereto, based upon the costs shown for August, excluding interest and depreciation, were \$1,998.74, or \$4.23 per car on 472 cars, the average number switched per month. The average monthly net income from switching during the 10 months is shown as \$188.59, and the net income for August is shown as \$246.96, without any allowance for interest or depreciation in either case.

The value of the property used by defendant in switching at Leavenworth is given as \$247,399.47, of which 66.87 per cent is assigned to switching service and the balance to the line-haul service, based on the number of cars handled in each class of service. The above amount, however, includes \$75,586.91 for land, whereas it appears that most of the 4.773 miles of track used by defendant in its Leavenworth yard limits are located on public property. If the value of this land be deducted from the valuation, that portion thereof assignable to the switching service would still be over \$100,000. Interest at 6 per cent on \$100,000 would amount to \$6,000 per year, or \$500 per month.

We are of the opinion that some of the items embraced in the cost study and some other items entering into the valuation may be excessive or improperly included, but considerable allowance may be made for such items and it will still be found that defendant's switching revenues do not afford more than a fair return on the value of the property devoted to the switching service over and above the cost of such service.

We find that the charges assailed for team-track switching of interstate shipments are unreasonable to the extent that they exceed \$5 per car; and that the other charges assailed have been justified in so far as they apply on interstate shipments.

An appropriate order will be entered.

No. 11530.

CAIRO ASSOCIATION OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL  
RAILROAD COMPANY, ET AL.

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Submitted May 10, 1921. Decided July 15, 1921.

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So-called net rates on logs, bolts, billets, and poles, in carloads, from points on the Illinois Central and Mobile & Ohio railroads south of the Ohio River to Cairo, Ill., and minimum carload weights maintained by the Illinois Central in connection with such rates, found not unreasonable. Complaint dismissed.

*Ray Williams* for complainants.

*A. F. Humburg* and *C. J. Rixey, jr.*, for defendants.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*CLARK, Chairman:*

Complainants are the Cairo Association of Commerce, an incorporated organization, and the Turner, Day & Woolworth Handle Company, hereinafter called complainant, a corporation engaged in the manufacture of handles at Cairo, Ill. It is alleged that the so-called manufacturers' or net rates on logs, bolts, billets, and poles, hereinafter referred to collectively as rough material, from points south of the Ohio River on the Illinois Central and Mobile & Ohio railroads to Cairo are unjust and unreasonable; that the minimum weight provisions maintained by the Illinois Central are unreasonable; and that the rates applicable on billets have been erroneously charged on complainant's shipments of handle bolts. We are asked to prescribe reasonable rates and minimum weights for the future and to award reparation.

The issues were made the subject of a proposed report by the examiner, to which exceptions were filed by complainants.

Defendants maintain two sets of rates on rough material from points on their lines south of the Ohio River, the higher being known as gross rates and the lower as manufacturers' or net rates. The use of the latter is conditioned upon an outbound movement of manu-

factured products in the ratio of 1 pound of products to every 1.5 to 5 pounds of inbound rough material. The net rates are published in the form of distance scales and vary somewhat as between the Mobile & Ohio and Illinois Central. Except on billets the Mobile & Ohio scale is higher than that of the Illinois Central for distances up to 30 miles and the same or lower for longer distances. From points on the Illinois Central, the rates on billets are higher than on logs, bolts, and poles, the original basis having been 120 per cent of the log rates with a minimum differential of 0.5 cent per 100 pounds. This relationship was disturbed somewhat in the establishment of increased rates under general order No. 28 of the Director General of Railroads and our authorization of July 29, 1920. The Mobile & Ohio applies the same rates on billets as upon the other classes of rough material.

The scales of net rates do not apply to points on the north bank of the Ohio River and rates to Cairo are made by adding an arbitrary of 3 cents per 100 pounds to the net rates applying to East Cairo and Wickliffe, Ky. The distance scale rates are not attacked but complainant alleges that the through rates are unreasonable to the extent that the arbitrary exceeds 2 cents, the amount added to the south-bank rates in making rates to Cairo on lumber. It is apparently complainant's view that an arbitrary on the grade of material here under consideration greater than that upon lumber is of itself unreasonable. In determining whether rates are unreasonable, however, consideration can not be confined to one component. The through charge must be examined. *Rates on Lumber from Southern Points*, 34 I. C. C., 652. Complainant also shows that the through rates to Cairo are higher than the net rates applying for similar distances south of the Ohio River over the lines of defendants and other carriers. These comparisons fail to take into account the cost of river crossing at Cairo and the haul of some 20 miles after the bridge is crossed before shipments can be delivered at industries in Cairo.

For defendants it is said that the net rates, originally established to encourage the clearing of forests for agricultural purposes and to increase the use of southern woods by manufacturers, have never been considered by the carriers to be fully compensatory. Comparisons of the scales of net rates with other rates in this and other territories on the same commodities and on other low-grade traffic show that the former are relatively low. The average haul of the rough material to Cairo probably does not exceed 100 miles. The through rates attacked are lower than the through rates on lumber from the same points of origin to Cairo. In *Rates on Lumber and Lumber*

*Products*, 52 I. C. C., 598, we held that billets, rived, split, or sawed, and poles might properly take the same rates as lumber.

The minimum weights for the gross and net rates are usually the same, but on billets from points on the Illinois Central the minimum is 30,000 pounds for the gross and 50,000 pounds for the net rates. Complainant objects to the latter minimum on the ground that shippers are not always informed of the higher minimum for the net rates, and sometimes fail to load sufficiently to meet that minimum, necessitating the payment of charges on material not actually transported. A shipper is presumed to know the rates and applicable provisions of the carriers' published tariffs. *Chicago & Alton R. R. Co. v. Kirby*, 225 U. S., 155. The gross and net rates apply to distinct services, and we have held that, under appropriate conditions, a lower rate may properly apply on a higher carload minimum. *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611. The desirability of uniform minima under appropriate conditions should not be overlooked, but in the absence of any showing to the contrary it must be assumed that the higher minimum is reasonably intended to comport with the loading capacity of the cars. *Northwestern Woodenware Co. v. C., M. & P. S. Ry. Co.*, 28 I. C. C., 237. The record affords no basis upon which it might be found unreasonable or otherwise unlawful.

The tariff rule attacked related to the rates to be applied to a deficit between the actual and the minimum weight of rough material. At the hearing it developed that the objection to this rule was due principally to the manner in which it had been applied by the auditing department of the Illinois Central. A representative of that carrier admitted that the interpretation placed upon the rule by the auditing department was erroneous and that steps had been taken to have it applied correctly. The wording of the rule has since been modified so as to remove the element of ambiguity and it need not be further discussed. If any overcharges resulted from the erroneous interpretation of the rule they should, of course, be promptly refunded.

The material shipped to complainant, of which samples were introduced in evidence, consists of short pieces of wood, split or sawed to convenient size for turning purposes. The billet rates have been assessed on this material, but complainant contends that the bolt rates are legally applicable. For defendants it was stated that before the billet rates were established samples of what the manufacturers termed "billets" were submitted to the carriers and that the rates established were for application on pieces of wood of the kind received by complainant; that the billet rates have been applied on

such pieces of wood since their establishment a number of years ago; and that complainant is the only party contending that they are not billets. In *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, we said:

The testimony shows that in producing a wooden spoke the tree when felled is cut into short lengths termed bolts. When the farmer cuts his own timber he splits the bolts into sections called rived or split billets \* \* \*. When the spoke manufacturer produces his own bolts he \* \* \* saws them into billets.

Upon this record we find that the pieces of wood introduced in evidence by complainants are billets and not bolts, and that the net rates and minimum weights assailed were not and are not unreasonable. The complaint will be dismissed.

62 I. C. C.

No. 11760.

FRANK P. MILLER PAPER COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY AND PHILADELPHIA &amp; READING RAILWAY COMPANY.

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*Submitted May 16, 1921. Decided July 15, 1921.*

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1. Charges for interchanging interstate inbound carload traffic between defendants' lines at Downingtown, Pa., found unreasonable. Reasonable maximum charge prescribed for the future.
2. Failure of defendants to provide for absorption of such charges, not found to be unreasonable, unjustly discriminatory, or unduly prejudicial.
3. Failure of defendants to interchange outbound interstate carload traffic at Downingtown, and to provide charges therefor, not found unreasonable, unjustly discriminatory, or unduly prejudicial.

*Harold S. Shertz* for complainants and intervener.*Henry Wolf Bickel* for Pennsylvania Railroad Company.*Benjamin R. Boggs* for Philadelphia & Reading Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*CLARK, Chairman:*

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainants and the parties were heard in oral argument.

Complainants are corporations engaged in the manufacture of paper board, steel, and other products at Downingtown, Pa. The complaint alleges that the rates maintained by defendants for the service of switching or interchange of interstate carload traffic between their lines at Downingtown are unreasonable, unjustly discriminatory, and unduly prejudicial; and that the failure of defendants performing the road haul on inbound or outbound interstate carload traffic, respectively, to absorb such charges is unreasonable, unjustly discriminatory, and unduly prejudicial. The Downingtown Business Club, representing citizens, taxpayers, and commercial interests of Downingtown as well as the city itself, intervened in support of the complaint.



We are asked to prescribe reasonable charges and to require defendants to absorb them on inbound and outbound interstate carload traffic.

Downingtown is a manufacturing community about 1.5 square miles in area, with a population of between 3,500 and 4,000. It is located about 30 miles west of Philadelphia, Pa., and is reached by the Pennsylvania Railroad and the Philadelphia & Reading Railway, hereinafter respectively referred to as the Pennsylvania and the Reading.

The Pennsylvania has terminal facilities at Downingtown which greatly exceed those of the Reading. Of the 15 industries at Downingtown, 11 are located upon the tracks of the Pennsylvania and 2 on the tracks of the Reading. None of them is served by tracks of both roads. It is difficult to obtain a site that would enable a shipper to secure track connection with both lines. The average monthly tonnage handled into and out of Downingtown is approximately 16,000 tons, of which 90 per cent is hauled by the Pennsylvania.

Defendants interchange traffic between their lines at Downingtown at a charge of 56 cents per ton plus \$7 per car, increased on August 26, 1920, from 40 cents and \$5, respectively. The tariffs of both defendants provide that such charges are applicable on carload traffic moved from a private siding or team track of one defendant to a private siding or team track of the other. The tariffs further provide that such charges are applicable only on carload traffic, except coal and coke, originating at points beyond Downingtown, on which one of defendants "has received a road haul and which is reconsigned without having broken bulk." There is no provision for absorption of these charges by either defendant. There are no other local switching charges in effect for movement of traffic at Downingtown, between points on the Pennsylvania and points on the Reading, except on coal and coke, as hereinafter noted.

For a period during federal control, commencing August 6, 1919, the Pennsylvania maintained a switching charge of \$5 per car on all freight except coal and coke, in carloads or less than carloads, when aggregating 12,000 pounds or more per car, or when loaded to full cubic capacity of car, between its junction with the Reading and industrial or private sidings within the switching limits of Downingtown served directly by the Pennsylvania. The Reading also maintained a switching charge of \$5 similarly applicable. Both carriers also maintained during this period provision for the absorption of this \$5 charge on shipments originating beyond Downingtown at points on or reached by their lines, when the revenue for the road haul was \$15 or more per car. The tariffs carrying the \$5 charge and the absorption provisions were published to expire at the termi-

nation of federal control. At the end of federal control the former rates of 40 cents per ton plus \$5 per car were applied.

On coal and coke in carloads there is a rate of 56 cents per ton for interchange between the two lines, and the tariffs of the Pennsylvania provide for absorption of this charge on shipments originating beyond Downingtown and requiring delivery by the Reading at that point. This rate is not specifically attacked and it is not included in our findings.

The tariffs applicable on commodities other than coal and coke are not published as switching tariffs, but provide for the assessment of this interchange charge by the carrier performing the line haul into Downingtown, on the basis of a reconsignment charge. Defendants' witness testified that the \$7 factor was the reconsignment or diversion charge, which accrued to the carrier performing the line haul, and that the charge of 56 cents per ton was paid the delivering carrier as compensation for the switching service from the interchange track to point of delivery.

In support of their allegations of unreasonableness, complainants compare the charges assailed with charges in effect at other points in Pennsylvania applicable on switching or interchange movement between the Pennsylvania and the Reading, which range from 14 cents per ton to \$7 per car. At Coatesville, Pa., as well as at other points referred to by complainants, the Pennsylvania and the Reading have reciprocal absorption arrangements. Complainants also refer to other points at which there is switching between the Pennsylvania and various connecting lines where charges are absorbed. They contend that the maintenance of these lower rates and absorptions at Coatesville and other points subjects Downingtown and the shippers located there to undue prejudice and disadvantage.

A large part of complainants' testimony and brief were devoted to the question of service at Downingtown, which they contend is unsatisfactory, due to the inability to freely interchange traffic between the two roads. Complainants take the position that if a low switching charge was made effective and was absorbed by the line-haul carrier a competitive situation would follow which would result in betterment of the service. For example, at the present time a shipment originating at a point on the lines of the Pennsylvania destined for Downingtown, Reading delivery, is ordinarily handled by the Pennsylvania to its junction with the Reading at Milton, Harrisburg, or Belmont, Pa., and there turned over to the Reading. It is stated that there is often congestion at these junction points, that traffic does not always flow freely and continuously, that delays occur and cars are bunched at the junction. Complainants contend that this evil would be lessened if low switching

charges were in effect which were absorbed by the line-haul carrier, and that in that event the Pennsylvania would handle the shipments through to Downingtown and turn them over to the Reading at that point. It is asserted that great improvement followed the establishment of such provisions during federal control. A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of unjust discrimination or undue prejudice. *Wood & Son v. Erie R. R. Co.*, 45 I. C. C., 587, 589. Although such provisions appear to be applicable at numerous points cited by complainant, there is not adduced herein such evidence as warrants a finding of undue prejudice against Downingtown.

Complainants refer to our power to require carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic and to the recent amendments to the interstate commerce act which increase our powers relative to requiring carriers to open their terminals to other carriers when it is in the public interest. This is not a case in which carriers have refused to open their terminals to each other. On the contrary, traffic inbound is interchanged under tariffs providing charges therefor. It is the reasonableness of the charge that demands consideration.

As has been indicated, no switching charges are now applicable on outbound traffic at Downingtown. If the switching arrangements requested by complainants were established, a shipper located on the Pennsylvania desiring to ship to Philadelphia could require the Pennsylvania, which reaches Philadelphia, to switch the car to the interchange track and turn it over to the Reading to haul it to Philadelphia. In *The New York Harbor Case*, 47 I. C. C., 643, commenting upon a somewhat similar situation, we said, at page 722:

Such an arrangement would short haul the Pennsylvania quite as effectively as the establishment of a through route and joint rate over that route, and in requiring such a service we would simply accomplish indirectly what is expressly prohibited by the act, namely, requiring a carrier to participate in a through route embracing substantially less than the entire length of its line between the points in question.

The defense was assumed by the Pennsylvania. The Reading offered no evidence and filed no brief. The Pennsylvania's main objection to reduction in the charges in question is that it has a predominant traffic interest at Downingtown and the establishment of low switching charges would permit of the Reading absorbing same, thus enabling it to acquire a larger part of the traffic with resultant loss of revenue to the Pennsylvania. It is contended that the practices prevailing at the points referred to in complainants' comparisons are due to various exceptional local conditions. The Pennsylvania has elected to perform an interchange service at Downing-

town, and having so elected it must provide a reasonable charge therefor. *Thatcher Mfg. Co. v. Director General*, 57 I. C. C., 244, 246.

For defendants it is stated that joint rates are generally in effect to Downingtown, and that traffic can move into Downingtown by way of the junctions between the Reading and the Pennsylvania in as convenient a manner as if it were interchanged at Downingtown. It is said that the purpose of the charges now in effect is to compel proper routing to Downingtown. It is asserted that if a shipper routes a shipment via the Pennsylvania to Downingtown to a consignee requiring Reading delivery, the turning of the shipment over to the Reading through interchange at Downingtown is tantamount to a reconsignment and that the charge of \$7 assessed therefor is reasonable.

Movement from the tracks of one defendant through the interchange track to an industrial siding or delivery point on the rails of the other defendant would involve a haul of not over 1 mile. Notwithstanding the fact that defendants characterize the service in question as a reconsignment, the service performed is interchange and switching, for which only a reasonable charge based on such service may properly be assessed. In several cases in which somewhat similar situations were presented we have held that a reasonable charge for the delivery from one carrier to another should not exceed 2 cents per 100 pounds. *Merchants & Manufacturers Asso. v. P. R. R. Co.*, 23 I. C. C., 474; *Jefferson Milling Co. v. B. & O. R. R. Co.*, 31 I. C. C., 547. In *Thatcher Mfg. Co. v. Director General*, *supra*, decided March 5, 1920, we established a charge of 40 cents per ton for a service almost identical with that here considered. A rate of 56 cents per ton would represent the 40-cent rate plus the increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

We find that the charges assailed are not shown to have been or to be unduly prejudicial, but that they are unreasonable to the extent that they exceed 56 cents per ton, net or gross, as rated; that the failure of defendants to maintain charges applicable on outbound traffic interchanged at Downingtown is not unreasonable, unjustly discriminatory, or unduly prejudicial; and that the absence of reciprocal absorption provisions in defendants' tariffs covering the charges assailed and herein prescribed is not unreasonable, unjustly discriminatory, or unduly prejudicial.

An appropriate order will be entered.

THE SHEFFIELD & TIONESTA RAILWAY COMPANY.  
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF  
RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.  
CANCELLATION OF RATES IN CONNECTION WITH  
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-  
CATION TERRITORY.

*Submitted July 9, 1919. Decided July 5, 1921.*

The Sheffield & Tionesta Railway Company found to be a common carrier subject to the interstate commerce act which may lawfully receive divisions of joint interstate rates or absorption of its switching charges under appropriate tariff provisions from its trunk line connection, such divisions or charges to be reasonable.

*Arthur B. Hayes and F. D. Gallup* for Sheffield & Tionesta Railway Company.

*Frederic L. Ballard and George D. Ogden* for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The portion of this proceeding now before us presents the question whether the Sheffield & Tionesta Railway Company, hereinafter called the Sheffield, is a common carrier subject to the interstate commerce act which may lawfully participate in joint rates with other common carriers or have its charges absorbed under appropriate tariff provision out of the interstate rates to and from points on its line. Additional information contained in a response to the Commission's questionnaire of May 29, 1919, showing changed conditions since January 1, 1914, has been made a part of the record, with the assent of the Sheffield and the Pennsylvania, its trunk line connection.

The Sheffield was organized June 1, 1901, with an authorized capital stock of \$150,000, increased in 1912 to \$200,000. Bonds

aggregating \$75,000 in principal amount, and all shares of its capital stock, except directors' qualifying shares, were issued to T. D. Collins in payment for construction and equipment of the road. Later additional bonds in the principal amount of \$62,000 were issued. These shares and bonds have passed to E. S. Collins, who owns three industries served by the Sheffield, and has a substantial interest in several others so served. The vice president of the railroad is superintendent of one of the affiliated industries.

The Sheffield is in northwestern Pennsylvania and extends from Sheffield, where it connects with the Pennsylvania, to Tionesta, passing through and serving Kellettville, Mayburg, and Nebraska. It owns and operates 40.8 miles of main track and 2 miles of spurs and sidings, 4 locomotives, 5 passenger cars, 29 freight cars, and 8 company-service cars. It does not interchange its equipment. Its annual report for the year ended December 31, 1919, shows the amount carried on the books as investment in road and equipment was \$348,064.39 less \$24,297.13 accrued depreciation. The valuation of the property by us has not been completed.

The average length of haul is 22 miles, between affiliated industries and the trunk line, and 17 miles between independent industries, stations, or team tracks and the trunk lines. The names of some 48 industries served by the Sheffield were furnished. Three of these have industrial tracks or sidings. One of the three has two locomotives; and two others have industrial railways with their own locomotives and tracks. The latter railways are owned by proprietary industries, and move logs over the Sheffield under trackage rights, the compensation for which is 8 cents per 1,000 feet, log measure. The Sheffield does not operate over, interchange cars with, or lease equipment from these lines. The following is an analysis of its traffic and revenue for the calendar year 1918:

Service.	Number of tons.	Number of cars.	Amount of revenue.
<b>Interchange service:</b>			
(a) Between plants of controlling industries and trunk line.....	72,413	2,646	\$39,296.65
(b) Between plants of affiliated industries and trunk line.....	16,458	1,392	20,989.22
(c) Between independent industries and trunk line.....	16,652	728	11,764.15
(d) Between team tracks or freight stations and trunk line.....	5,606	273	4,821.43
Local switching.....		15	45.00
<b>Less-than-carload traffic:</b>			
(m) For controlling or affiliated industries.....	1,061		1,721.95
(n) For other industries and the public.....	3,923		4,640.72
<b>Other revenue:</b>			
(o) Passengers (43,360).....			15,564.18
(p) Mail.....			1,456.44
(q) Express.....			2,408.79
(r) Miscellaneous.....			4,208.00
<b>Total.....</b>	<b>116,133</b>	<b>5,054</b>	<b>106,913.63</b>

<sup>1</sup> Of the carload shipments 1,363 moved in interstate commerce.

No plant switching services are performed. Bills of lading and waybills are issued in the usual manner and tariffs and annual reports are filed with us. The last annual report on file, that for 1919, shows that in that year a dividend of 7 per cent was declared. There are about 23 stations on the line. It is stated that independent and affiliated industries enjoy services similar to those performed by trunk lines. The Sheffield has exercised the power of eminent domain.

Joint rates are divided on agreed percentages. The record does not show the amount of the divisions. It was testified at the hearing in 1914 that as a rule they were on a distance basis of 40-mile blocks. In general, if the shipments moved off the line of the Pennsylvania the Sheffield received 20 per cent of the joint rate. The Sheffield formerly charged \$3 per car for switching to private sidings from its connection with the Pennsylvania. Effective May 1, 1920, this charge was increased to \$7.50. Its charges for local switching between points on its line are not on file with us. It is a member of the American Railway Association, collects demurrage and settles with the trunk lines on a per diem basis, but does not receive reclaims. No average agreements with shippers have been executed.

We are of opinion and find that the Sheffield is a common carrier subject to the interstate commerce act which may lawfully receive divisions of joint interstate rates or absorption of its switching charges in accordance with duly published tariff schedules from its trunk line connection. The present record does not afford a basis for stating the maximum amount which may properly be paid, but the divisions must not be more than is reasonable; and a specific and complete statement of any basis agreed upon must be filed with us.

No order is necessary.

62 I. C. C.

No. 11422.  
PROCTER & GAMBLE COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted November 26, 1920. Decided July 7, 1921.*

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Upon further consideration, held, that the rate charged on peanut oil, in tank-car loads, from Suffolk, Va., to Macon, Ga., was unreasonable. Reparation awarded. Prior finding that the rate charged on a less-than-carload shipment of the same commodity in barrels from Suffolk to Macon was not unreasonable affirmed. Original report, 60 I. C. C., 757.

*H. Ignatius* for complainant.

*Alex. M. Bull* for defendant.

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION.

BY THE COMMISSION:

In this case the complainant alleges that the charges collected on six shipments of peanut oil from Suffolk, Va., to Macon, Ga., in July, August, and September, 1919, were unreasonable. The prayer is for reparation only. One shipment was in barrels. It weighed 11,366 pounds and charges thereon were collected, based on the applicable less-than-carload rate of 95 cents per 100 pounds. The other five shipments were in tank cars and charges thereon were collected, based on the applicable carload rate of 54 cents per 100 pounds.

In our original report, 60 I. C. C., 757, we found that the rates complained of were not unreasonable. The complaint was dismissed. On June 6, 1921, on petition of the complainant, the case was reopened for further consideration. The pertinent facts are set forth in the original report and need not be stated here.

Upon further consideration of the record we find that the rate charged on the less-than-carload shipment was not unreasonable, but that the rate charged on the carload shipments was unreasonable to the extent that it exceeded 36 cents per 100 pounds. We further find that complainant made the carload shipments as described and paid and bore the charges thereon; that it has been damaged thereby to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$545.97, with interest.

An appropriate order will be entered.

62 I. C. C.



No. 10737.<sup>1</sup>

## MONROE SHINGLE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS SOUTH-  
WESTERN RAILWAY COMPANY, ET AL.

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Submitted May 4, 1921. Decided July 7, 1921.

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1. Upon reconsideration, rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles in carloads, from Lake Charles, La., to various points in Texas, found not unreasonable or unjustly discriminatory. Complaint dismissed. Former report, *Independent Cooperative Lumber Co. v. L. W. R. R. Co.*, 51 I. C. C., 557, reversed.
2. Rates on cypress shingles, in carloads, from Monroe, La., to various points in Texas found not unreasonable. Complaint dismissed.

*H. J. Fernandez* for complainant.*Denegre, Leovy & Chaffe and Baker, Botts, Parker & Garwood* for defendants.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

Complainant in No. 10737 is the Monroe Shingle Company, of which Richard Downes, jr., is the sole owner, operating a cypress shingle mill at Monroe, La. By complaint, filed June 16, 1919, it is alleged that defendants' rates on cypress shingles, in carloads, from Monroe to Stephenville and 18 other points in Texas were and are unreasonable to the extent that they exceeded and exceed the rates on yellow-pine lumber contemporaneously in effect. We are asked to award reparation on shipments moving within two years from the time the complaint was filed and up to the time of the hearing, and to require the application of the yellow-pine rates on cypress shingles for the future. The issues were made the subject of a proposed report by the examiner and exceptions thereto were filed by defendants. Because of the relation of the rates considered to those which were before us in Nos. 7924 and 8498, *Independent Cooperative Lumber Co. v. L. W. R. R. Co.*, 51 I. C. C., 557, decided

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<sup>1</sup> The report also embraces No. 7924, *Independent Cooperative Lumber Company v. Louisiana Western Railroad Company et al.*, and No. 8498, *Same v. Abilene & Southern Railway Company et al.*, on reconsideration.

December 2, 1918, by orders of March 8, 1921, we reopened the three proceedings. Further hearing was waived by the parties, and the cases are now before us for consideration upon the original records. Rates will be stated in cents per 100 pounds.

NOS. 7924 AND 8498.

Complainants herein, copartners, assail as unreasonable and unjustly discriminatory the rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles in carloads, from Lake Charles, La., to San Antonio and various other points in Texas. We are asked to prescribe just and reasonable rates for the future, and in No. 7924 to award reparation. The cases were heard together and disposed of in one report. In our original report, 51 I. C. C., 557, we found that the rates assailed were unjust and unreasonable in so far as they exceeded the rates contemporaneously applicable on pine lumber from Lake Charles to the same points. Reparation was awarded, but has not been paid. As the case was decided during the period of federal control, and the Director General of Railroads was not a party defendant, no order for the future was entered.

The shipments consisted principally of pine lumber, but each car contained more or less cypress lumber or shingles. Charges were collected at the rates applicable on cypress lumber and shingles in accordance with the following tariff rule:

Rate on mixed carloads of different kinds of lumber, and articles taking the same rates, or arbitraries higher, will be the highest rate applicable on any article contained in the car.

While the prayer of each complaint is for rates on cypress lumber and shingles not in excess of the contemporaneous rate on pine lumber and shingles, complainants stated at the hearing that they would be willing to pay on the cypress products a uniform differential over the rates paid on the pine products, or would even be satisfied with the existing differentials, provided the rule was amended so as to require the payment of the cypress rates only on the cypress products in the cars, the pine products to be charged at the pine rates. It is therefore apparent that the substantial ground of complaint is the rule which, as to mixed carloads of pine and cypress products, requires payment of the cypress rate on the entire carload, rather than the intrinsic fact that higher rates are applicable on cypress than on pine.

Little evidence was offered by complainants. The only evidence in support of the allegation of discrimination against cypress products and in favor of pine products was a statement of the existing differentials, the allegation of the witness that equal rates are main-

tained on pine and cypress to Oklahoma, Kansas, and a number of other states, and some testimony as to comparative value of pine and cypress products. Complainants do not ship straight carloads of cypress products from Lake Charles. Their cypress shipments will average about 15,000 shingles, or 5,000 pounds, to a car.

Our conclusion that the cypress rates assailed were unjust and unreasonable in so far as they exceeded the rates contemporaneously applicable on pine lumber from Lake Charles to the same points was predicated upon the rates cited by defendants, from which the following deductions were made: That the pine rates from Lake Charles, alleged by defendants to be depressed by reason of low rates from points in eastern Texas to the same destinations, did not appear unduly low in comparison with exhibited rates, including those from White Castle and Harvey, La., from which latter points we stated that lumber rates are not affected by the Texas competition referred to; and that the exhibited rates on cypress lumber from White Castle and Harvey, and on all species of lumber from Omaha, Nebr., and St. Louis, Mo., were, with few exceptions, lower for like distances than the rates assailed on cypress lumber, and in most instances no higher than rates on pine lumber from Lake Charles to the Texas destinations named in the complaint. We further stated that the cypress rates assailed appeared unreasonable as compared with the rate from the southwestern pine blanket to Memphis, Tenn., approved in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33; and we found no competitive influences not common to both pine and cypress.

In constructing the rates on lumber and shingles, other than cypress, from Louisiana to the Texas destinations referred to in the complaint, defendants have divided the southern portion of the state of Louisiana into two blankets, one extending from Eunice west to the Sabine River, and the other from Crowley east to Anchorage, a short distance west of Baton Rouge, and to Harvey, a short distance west of New Orleans. From the western blanket, the rate to San Antonio, a representative destination, prior to June 25, 1918, was 18.75 cents, and from the eastern blanket 20 cents. The cypress rates, however, were made under a single blanket extending from the Sabine River to Anchorage and Harvey. Prior to June 25, 1918, the rate from this blanket to San Antonio was 22 cents. All of these rates were, on June 25, 1918, increased 25 per cent, but not exceeding an increase of 5 cents per 100 pounds, pursuant to general order No. 28 of the Director General, and again increased on August 26, 1920, 35 per cent, as authorized by us on July 29, 1920. Lake Charles is 28 miles from the western edge of the blanket. Since the rates from the eastern pine blanket were made a fixed differential over

those from the western pine blanket, it is apparent that any influences operating to depress the rates from the western blanket would affect the rates from White Castle and Harvey, within the eastern blanket. Our conclusion, therefore, that rates from White Castle and Harvey were not affected by the Texas competition, which will be further explained hereinafter, was erroneous.

While it was stated that, for like distances, the cypress rates from White Castle and Harvey were, with few exceptions, lower than the cypress rates from Lake Charles and, in most instances, no higher than the pine rates from Lake Charles, it is found that this statement is incorrect as to White Castle. In few instances are the cited rates really comparable, there being but five rates cited from each of the two points which apply for comparable distances. The distances from Lake Charles range from 123 to 418 miles; those from Harvey, from 335 to 666 miles; and those from White Castle, from 314 to 1,068 miles; and the exhibited rates from White Castle are not those applicable to the same destinations as are used in the exhibits pertaining to Lake Charles and Harvey. For like distances the exhibited rates applicable on all species of lumber from Omaha are lower than the cypress rates from Lake Charles, and in most instances no higher than the pine rates from Lake Charles; but the exhibited rates from St. Louis apply for distances ranging from 365 to 693 miles, and in only two instances do they apply for distances comparable with those for which the Lake Charles rates are applicable. However, the fact that the rates from Lake Charles are higher, distance considered, than the rates from Omaha and from Harvey, does not demonstrate that the former are unreasonable, as it fails to take into consideration the fact that Lake Charles is in the extreme western end of a blanket 241 miles in length. Every blanket adjustment necessarily involves more or less disregard of distance, and varying degrees of inequality. In *Galloway Coal Co. v. A. G. S. R. R. Co.*, 40 I. C. C., 311, 320, we said:

\* \* \* relative distances alone are not controlling. Commercial competition and the interests of consumers also are pertinent considerations. Consumers may properly have the widest possible market consistent with justice to the carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. Carriers may not, of course, disregard all differences in distances. Groups can not be extended indefinitely, and the discrimination inherent in all group adjustments must not be undue. Groups long maintained, however, are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unjust and unlawful discrimination.

The average distance from the center of the blanket to the destinations named in No. 7924 is approximately 391.5 miles, and from the exhibits it appears that the average rate on cypress at the time of hearing, prior to June 25, 1918, was 21.2 cents. The earnings under this rate would be 10.8 mills per ton-mile. These earnings compare favorably with earnings averaging 10.7 mills for distances averaging 376 miles, under 33 rates on lumber, cited by defendants, which have been approved by us in various formal proceedings, for application from points of origin in Alabama, Arkansas, Georgia, Louisiana, Missouri, Nebraska, Oklahoma, and Texas, to destinations in Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, and Wyoming. Defendants also cited cypress rates from Boyce, La., to 23 Texas destinations which, for an average distance of 454 miles, yield ton-mile earnings of 9.9 mills.

In *Lumber Rates from Lake Charles and West Lake, La.*, 31 I. C. C., 258, we approved rates on lumber from Lake Charles, and from West Lake, 3 miles west of the former, to destinations in Texas ranging in distance from 275 to 408 miles, which yielded earnings of from 10.3 to 12.7 mills per ton-mile. In *Lutcher & Moore Lumber Co. v. T. & N. O. R. R. Co.*, 42 I. C. C., 88, we found to be reasonable for application on yellow-pine lumber from points in Louisiana and Texas, including Orange, Tex., West Lake, and Alexandria, La., to Oklahoma destinations, a rate of 24 cents which, for an average distance of 577 miles, yielded 8.31 mills per ton-mile. In *Beaumont Timber Co. v. I. & G. N. Ry. Co.*, 45 I. C. C., 5, we found the rate on yellow-pine lumber from Willow, Tex., to Wilson, Okla., 425 miles, to be unreasonable to the extent that it exceeded a rate of 25.5 cents. This rate yields 12 mills per ton-mile.

A number of years ago the basis for rates on cypress lumber within Texas was generally 2 cents higher than the pine rates, and this basis was also maintained from Louisiana into Texas. The Railroad Commission of Texas prescribed a general reduction of the rates on pine lumber in Texas, and in order to permit producers of pine in Louisiana to compete with Texas producers, the carriers were forced to make the same reductions in the pine rates from Louisiana to Texas. There is substantially no production of cypress in Texas; therefore the rates on that variety of lumber in Texas were not reduced, and the cypress rates from Louisiana to Texas were not changed. The reduction of the pine rates from Louisiana, following the reductions in Texas, resulted in the spread between the cypress rates and the pine rates which is assailed in this proceeding. It is thus apparent that competitive influences have operated to produce low rates on pine from Louisiana which were not operative as to cypress.

In a number of cases we have prescribed a rule providing that charges on mixed carload shipments shall be based on the carload rate applying on the highest-rated article and subject to the highest minimum weight attaching to any article in the load; and in the *Consolidated Classification Case*, 54 I. C. C., 1, we recommended the establishment of such a rule for application in western classification territory, which includes the territory here under consideration. We can not upon this record find that the failure to provide that in assessing charges on mixed carloads of pine and cypress products each of the products in the car shall be charged at the rate applicable upon that particular product, was unreasonable.

Upon reconsideration of the record in these cases we find that the rates assailed for the transportation of cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles in carloads, were not and are not unreasonable or unjustly discriminatory. The complaints will be dismissed.

NO. 10737.

The distances from Monroe to Stephenville and the 18 other Texas destinations named in the complaint, over the routes of movement of complainant's shipments range from 251 to 792 miles, with an average of 471 miles. The rates at the time of hearing, November, 1919, ranged from 19.5 cents to 35.5 cents, with an average of 27.1 cents, and exceeded the corresponding rates on yellow-pine lumber by from 0.5 cent to 5 cents. These rates represent increases over the rates in effect on June 24, 1918, of 25 per cent, but not exceeding 5 cents per 100 pounds, pursuant to general order No. 28 of the Director General. They have since been further increased 35 per cent as authorized by us on July 29, 1920.

Complainant's movement of cypress shingles to Texas is very irregular, depending upon the market. Witness testified that some years he might not make any shipments to Texas, or again he might ship his entire output there. There is one other shingle mill at Monroe.

In support of its allegation of unreasonableness, complainant urges that from Monroe to points in states other than Texas, and from Baton Rouge, New Orleans, and points east thereof in Louisiana and Mississippi, to Texas, the rates on cypress do not exceed the rates on pine. Defendants do not deny that cypress and pine should ordinarily take the same rates, but refer to the effect of the Texas state-made pine rates upon the Louisiana pine rates hereinabove explained, in justification of the higher rates on cypress from Louisiana.

The average distance from Monroe to the points of destination via all published routes is 530 miles; and the average of the short-line  
62 I. C. C.

distances is 465 miles, or slightly less than the average of the distances over the routes of movement. The rates on cypress shingles are not the same over all routes, but the average of the minimum rates on June 24, 1918, was 22.2 cents, the earnings under that rate being 8.4 mills per ton-mile, using the average distance over all routes, and 9.5 mills, using the average short-line distance. The average of the pine rates from Monroe to the Texas points on June 24, 1918, was 19.8 cents, the earnings thereunder being 7.4 mills per ton-mile, using the average distance over all routes, and 8.5 mills, using the average short-line distance. Defendants compare the earnings under the cypress rates with those under the rates approved by us in the *Lake Charles and West Lake, Litcher & Moore Lumber Company*, and *Beaumont Timber Company Cases, supra*.

Defendants contend that if the cypress rates are forced down to the pine basis from Monroe, similar reductions will be necessary from the large cypress-producing region of southern Louisiana, the producers in which, with the single exception of complainants in Nos. 7924 and 8498, are not now complaining, and that as complainant sells his shingles in competition with those producers and finds it necessary to meet their prices he would be relatively in no better position than at present. The cypress production in Louisiana is, generally speaking, east of the yellow-pine district and ordinarily, therefore, cypress requires a longer haul to Texas. Considerable evidence comparing the value of and rates on cypress shingles and other roof coverings with which shingles come into competition was introduced by defendants, which it is unnecessary to discuss here.

We find that the rates assailed on cypress shingles from Monroe to points in Texas were not and are not unreasonable. The complaint will be dismissed.

Orders in accordance with the findings herein will be entered.

62 I. C. C.

No. 11824.

**FARLEY & LOETSCHER MANUFACTURING COMPANY  
ET AL.**

*v.*

**DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.**

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*Submitted May 19, 1921. Decided July 15, 1921.*

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Rates on sash, doors, door and window screens, and other millwork from Dubuque, Clinton, and Muscatine, Iowa, to Texas common-point territory and to El Paso group points found unreasonable and unduly prejudicial. Reasonable rates prescribed for the future. Reparation awarded.

*J. H. Henderson and Walter Condran* for complainants and interveners.

*A. B. Enoch* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.**

**DANIELS, Commissioner:**

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by the parties and argument had.

Complainants are corporations operating plants at Dubuque, Clinton, and Muscatine, Iowa, for the manufacture of sash, doors, blinds, door and window screens, and general millwork, and by complaint filed September 10, 1920, assail as unreasonable and unduly prejudicial the rates applicable on those products from the cities named to Texas common-point territory and to El Paso, Tex., and points taking the same rates. They ask for the establishment of rates corresponding to those voluntarily published by the carriers for application on the same commodities northbound between the same points. Reparation is sought on shipments that moved within the statutory period and since the filing of the complaint. The Wholesale Sash & Door Association, of Chicago, Ill., intervened in support of the complaint. Rates and differences in rates stated herein are in cents per 100 pounds. General millwork referred to in this report embraces lumber articles specified in tariffs published by F. A. Leland, agent, viz, item 4044, I. C. C. No. 1357 to Texas common points and item 1560-A, I. C. C. No. 1264 to El Paso group points.



The Iowa cities concerned are located on the west bank of the Mississippi River, and enjoy favorable transportation conditions to the destinations involved. The prevalent route is through Kansas City, Mo. St. Louis, Mo., is the basing point of the rate structure assailed. Muscatine is located in what is known as Omaha-Davenport territory, and takes a differential over St. Louis. Dubuque and, with certain exceptions, Clinton take Chicago rates, which include a differential over Muscatine.

On screens the rate from Dubuque and Clinton to Texas common points is 88 cents and from Muscatine 84.5 cents; on all the other commodities named the rate is 59.5 cents from Dubuque and 56.5 cents from Clinton and Muscatine. To the El Paso group the rate on screens from Dubuque and Clinton is 111.5 cents and from Muscatine 108 cents, and on the other commodities 86.5 cents from Dubuque and 83.5 cents from Clinton and Muscatine. The differential over St. Louis on screens is 10 cents from Dubuque and Clinton and 6.5 cents from Muscatine, and on the other commodities 10 cents from Dubuque and 6.5 cents from Clinton and Muscatine. Thus Clinton is in one group in the case of screens and in the other group on the remaining products. The reason for this variation in grouping on millwork is not clear, but as a general rule, and especially as to class rates to southwestern points, Clinton is grouped with Dubuque.

Complainants assert that there is no sound reason based on transportation characteristics or liability to loss and damage why the rates on screens, which are on a class-D basis as an exception to the classification in southwestern lines' tariffs, should differ from those on the other mill products, which are generally on a commodity basis. They contend for rates on all these products to all Texas points not to exceed 36.5 cents from Dubuque and Clinton and 34.5 cents from Muscatine, plus the general increases of 1920.

Formerly complainants obtained the lumber for their products from adjacent north central states, but since its depletion there they have been obliged to purchase Pacific coast fir and ship it overland to their Iowa plants. Within recent years the Pacific coast wood-working firms have been highly successful in developing markets for their output and have enlarged their factories correspondingly. It is from this source that complainants now experience their keenest competition in the Texas markets, and comparison of the relative bases of rates on these products from Iowa and California points forms the basis of their complaint. General order No. 28, effective June 25, 1918, increased to the extent of 5 cents the rates then in effect from both California and Iowa points, but some months later the Iowa rates, as they stood before general order No. 28, were in-

creased to the full 25 per cent prescribed generally by that order, while no change was made in the California rates. Moreover, screens take the same rates from California as do the other mill products, while, as before stated, this is not the rule from the Iowa points. The rates on millwork from the Pacific coast bear a fixed relation to the rates on lumber, there being extensive movements of both. Owing to the fact that but little lumber, and that hardwood, moves from Iowa and adjacent states to Texas, there is no definite relation maintained here between the same commodities.

The rate in effect on millwork from Weed, a representative California point, to El Paso is 69 cents and to Texas common points 74.5 cents. The distance from Weed to El Paso is 1,514 miles, and that to nine typical Texas common-point destinations averages approximately 2,170 miles by the prevalent routes through southern California, while from Dubuque the corresponding distances are 1,376 and 1,010 miles, respectively. From Muscatine and Clinton the approximate distances average from 4 to 6 per cent less than from Dubuque.

Taking the class-D rates as a standard of comparison, complainants show that the rate on screens from Dubuque to Texas common points is 100 per cent, and on sash and doors nearly 68 per cent, of the class-D rate, whereas the proportion from Weed on all millwork is but slightly over 51 per cent. To El Paso the proportion on screens from Dubuque is 100 per cent of class D and on sash and doors 77.5 per cent, while from Weed it is 47.4 per cent on all millwork. Approximately similar results obtain from the other Iowa points named. In the case of mixed carloads of sash and doors and screens, the highest rate on any commodity in the mixture applies on the entire carload. The average loading of screens is about 30,000 pounds, and of sash and doors about 36,000 pounds. The prescribed minima are, from the Pacific coast, 30,000 pounds on all millwork and from Iowa points 26,000 pounds to Texas common points and 30,000 pounds to El Paso on sash and doors, and a graduated scale on screens, beginning with 22,000 pounds for a 36-foot car.

Defendants contend that the present rates are not unreasonable and that the rates from Pacific coast points to Texas points are unduly low; that the latter are fixed by other carriers, which serve not only the points of origin but also most of the points of destination involved; and that they are powerless to eliminate undue prejudice, if any exists, without accepting subnormal revenue. They further assert that the northbound rates on millwork desired by complainants are in reality paper rates and were fixed with relation to northbound lumber rates, and that the latter have long been on

a subnormal basis in order to enable southern yellow pine to compete in Iowa and neighboring states with northern white pine, and, upon its depletion, with Pacific coast fir. Both the southbound lumber rates and the northbound millwork rates are substantially paper rates, hence for purposes of comparison they are of little value. The northbound lumber rates have unquestionably rested on a highly competitive basis for many years, and can not fairly be deemed to be a proper measure for southbound rates on millwork.

The following calculations of earnings are based on an average car loading of 30,000 pounds on screens and 36,000 pounds on sash and doors:

	To Texas common points.				To El Paso.			
	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings.	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings.
Screens from—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Weed, Calif.....	2,170	74.5	6.9	10.3	1,514	69	9.1	12.6
Dubuque, Iowa.....	1,010	88	17.4	26.1	1,376	111.5	16.2	24.2
Muscataine, Iowa.....	893	84.5	18.9	28.4	1,287	108	17.5	26.2
Sash and doors from—								
Weed, Calif.....	2,170	74.5	6.9	12.4	1,514	69	9.1	16.2
Dubuque, Iowa.....	1,010	89.5	11.8	21.2	1,376	86.5	12.6	22.7
Muscataine, Iowa.....	893	86.5	12.5	22.5	1,287	83.5	12.4	24.1

The disparity of the existing rates is apparent, and it clearly has the effect of restricting the market for complainants' products within the state of Texas. For the longest haul, from Dubuque to El Paso, 1,376 miles, the ton-mile earnings on sash and doors exceed those for the shortest average haul, from Muscatine to Texas common points, 893 miles, contrary to the recognized rule in rate making. The same is true with respect to the haul from Muscatine to El Paso in comparison with that from Muscatine to Texas common-point territory.

Screens readily load in excess of the minimum weight, and mixed carload shipments of screens and sash and doors are frequently desired by the smaller purchasers. There is nothing in the record that warrants a continuation of the distinction in classification and rates of the two kinds of millwork, and all these items should move on the same basis, as appears to be the rule in other parts of the country.

As previously stated, Clinton generally takes Chicago rates along with Dubuque, and the evidence fails to justify an exception in the case of sash and doors. Therefore, Dubuque and Clinton will be deemed to be in the Chicago group and Muscatine in the Omaha-Davenport group for the purposes of this report.

Upon consideration of the relative transportation characteristics of the movements involved herein, the earnings as set out above, and

the other factors developed of record we find that the rates assailed, in effect since August 26, 1920, have been, are, and for the future will be unreasonable and, so far as the same carriers participate in the transportation, unduly prejudicial to complainants and unduly preferential of their competitors on the Pacific coast to the extent that they exceed 56 cents and 69 cents per 100 pounds from Dubuque and Clinton to the Texas common points, Beaumont, Galveston, Houston, and Orange, Tex., and points taking the same rates, and to the El Paso group, respectively, and 53 cents and 66 cents per 100 pounds from Muscatine to the same groups, respectively. These rates will produce ton-mile earnings of about 9.9 mills for the longest haul and about 11.5 mills for the shortest average haul named. The difference in haul to the two destination groups in question justifies separate rates for each. The record discloses that few shipments have been made recently by complainants to the destination territories under consideration because of the disadvantageous rate situation. Complainants have, however, made certain shipments both prior and subsequent to the general increases of 1920. We further find that maximum reasonable rates in cents per 100 pounds on the shipments that were made within the statutory period prior to the general increases of 1920 would have been:

	To above-described Texas common points.	To El Paso, Tex., group.
From Dubuque and Clinton.	41.5 cents.	51 cents.
From Muscatine.-----	39 cents.	49 cents.

We further find that complainants Farley & Loetscher Manufacturing Company, Roach & Musser Company, and Huttig Manufacturing Company made shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and said complainants should comply with rule V of the Rules of Practice. Details of shipments made subsequent to the hearing may be included in the reparation statement if accompanied by appropriate proof in the form of an affidavit that the shipments were made and the freight charges thereon were paid and borne by the complainants named. The evidence with respect to proof of shipments and charges paid by Curtis Bros. & Company is not sufficient upon which to make an award of reparation on this record. They should also comply with rule V of the Rules of Practice in the same manner as the other complainants and file appropriate affidavits concerning their shipments and payment of charges. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to that question.

An appropriate order will be entered for the future.

No. 8899.

CANTON CHAMBER OF COMMERCE

v.

PENNSYLVANIA COMPANY, DIRECTOR GENERAL, AS  
AGENT, ET AL.

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*Submitted March 1, 1921. Decided July 7, 1921.*

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Reparation on coal shipped from the Pittsburgh and Connellsville districts in Pennsylvania to Canton, Ohio, on rates found in the original proceeding to have been unduly prejudicial to Canton and unduly preferential of Youngstown and Cleveland, Ohio, denied on further hearing. Original report, 56 I. C. C., 293.

*Hoyt, Dustin, McKeehan & Andrews and Neill Beall* for complainants.

*John F. Finerty, James Stillwell, and Royal McKenna* for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In the original report herein, 56 I. C. C., 293, decided January 5, 1920, we found that the adjustment of rates then maintained by the Pennsylvania Company on bituminous coal from the Pittsburgh and Connellsville districts in Pennsylvania to Canton, Ohio, subjected Canton to undue prejudice and disadvantage and unduly preferred Youngstown and Cleveland, Ohio, to the extent that the rate to Canton exceeded the rate to Youngstown by more than 20 cents per ton and to the extent that it was less than 20 cents per ton lower than the rate to Cleveland. The order requiring the removal of the undue prejudice was complied with by the Pennsylvania Railroad Company on April 24, 1920, by a reduction of 10 cents in the rate to Canton.

Prior to the submission of the matter on February 4, 1919, reparation had not been asked, but thereafter on November 28, 1919, the United Alloy Steel Corporation and the United Furnace Company filed complaints for reparation. On February 2, 1920, the proceeding was reopened for further hearing solely upon the question of reparation. Amended complaints were filed subsequently, covering the period from April 1, 1916, to April 23, 1920.

The United Alloy Steel Corporation is engaged at Canton in the manufacture of various iron and steel articles. From 1916 to the

62 I. C. C.

termination of the war its product was carbon steel; since then it has been alloy steel. The United Furnace Company manufactures the pig iron used by the steel company under a contract which provides that the price thereof shall be the prevailing market price of like pig iron in the Mahoning and Shenango valleys plus any excess cost of the raw materials over the cost of the same materials when assembled at the furnaces in the valleys. The coke and pig iron produced by the United Furnace Company in excess of the requirements of the steel company are sold on the general market. In this report the conclusions from the evidence are stated more briefly and clearly by taking the two companies as a unit instead of distinguishing the share each had in the industrial undertaking. Complainants shipped a large amount of coal from the Pittsburgh and Connellsville districts to Canton under the adjustment of rates found to subject Canton to undue prejudice and disadvantage, and it is on these shipments that reparation is claimed.

The record sufficiently shows that during the period in question complainants' costs of production were higher than they would have been if they had then enjoyed the new adjustment of rates by the difference in the freight charges on the coal used under the former and present adjustments; that they were unable to increase the sale prices of their output to cover the excess in cost of production; that consequently their profits were less by the amount of this excess cost; and that in selling their product they were in competition with manufacturers of like commodities at Youngstown and Cleveland, who enjoyed the unduly preferential rates on coal, and also in competition with manufacturers at other points between Pittsburgh and Chicago. During part of the period the prices were determined in the manner usual in the industry and during part of the period by the United States government. But the record does not show that these prices in general were determined by the competition with the manufacturers at Youngstown and Cleveland, nor, during the time of government control, on the basis of the costs of production of those manufacturers; nor that they were lower during any part of the period than they would have been if those points had not enjoyed the unduly preferential rates. In other words, the record supports the conclusion that complainants' profits were less than they would have been if the Canton rates had then been lowered to a proper relationship with the Youngstown and Cleveland rates, but it does not support the conclusion that they were less than they would have been if the Youngstown and Cleveland rates had then been raised to a proper relationship with the Canton rates.

There is testimony to the effect that some of complainants' sales were made at prices determined in competition with the Youngs-

town and Cleveland manufacturers, but the amount of damage, if any, is in no way indicated, for there is no evidence of the amount of such sales and no evidence of what margin in the prices is to be attributed to the undue preference in the coal rates. But here, also, the fact of damage is not proved, for there is no evidence that in the sales so made the prices were lower than the general level of prices determined by other more dominant manufacturers. In a region so close, east and west, to greater iron and steel producing centers not concerned in these coal rates, and a region shown by complainants' testimony to be one of overlapping competition, the inference can not be drawn that an advantage in cost of production at Youngstown and Cleveland as compared with Canton resulted in lower prices, and consequently lessened profits, to complainants, and there is no proof of it.

We find that complainants have not shown that they were damaged by the unduly prejudicial rate adjustment, therefore reparation is denied.

62 I. C. C.

No. 11475.

LAFAYETTE HYDRAULIC GRAVEL COMPANY ET AL.

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY  
ET AL.

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Submitted May 22, 1921. Decided July 15, 1921.

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Rates on sand and gravel, in carloads, from Lafayette, Ind., to certain points in Illinois found unreasonable and unduly prejudicial with relation to the rates on the same commodities from Attica, Ind., to the same destinations. Reasonable and nonprejudicial rates prescribed for the future.

*O. P. Gothlin* for complainants.

*L. H. Strasser, C. N. Richards, and N. S. Brown* for Wabash Railway Company; *A. P. Humburg* for Illinois Central Railroad Company; *Frank E. Webster* for Chicago & Eastern Illinois Railroad Company and *W. J. Jackson*, receiver; and *R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

CLARK, *Chairman*:

Complainants are engaged in the production of sand and gravel at Lafayette, Ind. They allege that the rates on those commodities from Lafayette to points in Illinois to which commodity rates on sand and gravel are maintained and applied from Attica, Ind., are unreasonable and unduly prejudicial as compared with the rates from Attica. The commodity rates from Attica to which complainants refer are those published in tariff I. C. C. No. 4714 of defendant Wabash Railway Company. We are asked to prescribe reasonable rates for the future. Rates and differences in rates are stated herein in amounts per ton of 2,000 pounds.

No exceptions were filed to the report proposed by the examiner.

Lafayette is served by the Wabash, which is the principal defendant in this proceeding; also by the Cleveland, Cincinnati, Chicago & St. Louis, the Lake Erie & Western, and the Chicago, Indianapolis & Louisville roads. Complainants' plants are served by the Chicago, Indianapolis & Louisville and the Lake Erie & Western, respectively, neither of which has been made a party defendant.



Both plants are within the switching limits of Lafayette. Their combined capacity is about 140 carloads of sand and gravel per day. The value of these commodities per ton ranges from 45 cents to \$1.50. The points of destination are all located on the Wabash and its connections, the nearest point being 37 miles and the most distant 284 miles from Lafayette. There is at present a considerable demand for sand and gravel for highway and other construction work in Illinois.

Commodity rates on sand and gravel are in effect from Lafayette to points on the Wabash as far west as Bement, Ill. The rate to Danville, Ill., a distance of 46 miles, is 98 cents. To Bement, for a haul of 100 miles, the rate is \$1.54. With the exception of Gibson City, Ill., to which a rate of \$1.12 applies, the only rates applicable over the Wabash to local points beyond Bement, and to points on connecting lines are the sixth-class rates, ranging from \$3.50 for 104 miles to \$5 for 284 miles. The rate to Gibson City is lower than the rate to Bement, an intermediate point. The apparent fourth section violation is unexplained. A switching charge of \$4 per car from complainants' plants to the interchange with the Wabash is absorbed by that carrier on competitive business.

Complainants are in competition with producers at Attica, a point on the Wabash 21 miles west of Lafayette. Commodity rates on sand and gravel are maintained from Attica to various points in Illinois on the Wabash and its defendant connections. These rates vary from 70 cents to \$2.10 for hauls of from 16 to 263 miles. Under the higher rates from Lafayette complainants are unable to ship to such points in competition with Attica producers.

It is admitted for the Wabash that the present adjustment is unduly preferential of Attica, and that defendant expresses a willingness to accord Lafayette commodity rates to all points in Illinois to which commodity rates are in effect from Attica. The other defendants object to the establishment to points on their lines of commodity rates from Lafayette in connection with the Wabash. They point out that the sand and gravel pits at Attica are on the tracks of the Wabash and shipments therefrom require, at the most, a single interchange, whereas complainants' shipments must be switched at Lafayette to reach the Wabash tracks, and, when destined to points beyond that road, would require two interchanges. They contend that the movement of these low-grade commodities should be confined as far as possible to local hauls, and that pits located on their own lines are the logical sources of supply for points on those lines.

The Attica plants are located on the Covington branch of the Wabash, from 2 to 3 miles off the main line. It is testified for com-

plainants that the delay and expense incident to the haul from the pits to the junction are substantially the same as those resulting from the switching movement at Lafayette. Defendants' objections to the establishment of commodity rates from Lafayette for joint hauls would, with minor exceptions, apply also to the rates from Attica in which they have long participated. But it can not be seriously contended that because the commodities are of low grade, or because of other sources of supply, their transportation from particular points should be confined to local hauls. Complainants may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and unjust discrimination.

Complainants propose, as a reasonable basis of rates from Lafayette, a differential of 10 cents over the commodity rates in effect from Attica. They call attention to the eastbound rates, which show a difference of 10 cents in favor of Lafayette to destinations as far east as Fort Wayne, Ind., 109 miles from Lafayette, while to destinations beyond that point the rates from Attica and Lafayette are the same. The cited rates are intrastate, and if increased to the same extent as were the interstate rates in 1920 the difference would become 14 cents. Rates from Lafayette to destinations in Illinois on the Wabash, based upon the ton-mile earnings under the rates from Attica to the same destinations, after allowing 50 cents per ton for terminal expenses, would be higher than from Attica by the following amounts: To Danville, 46 miles, 17 cents; to points between Danville and Decatur, 10 to 23 cents; to points beyond Decatur, 7 to 13 cents. To points on connecting lines much higher differences would result, on account of the relatively higher rates for two-line hauls from Attica. It is contended for complainants that the differential should in no instance exceed 10 cents. They urge that in view of the adjustment eastbound the two points of origin might well be grouped as to the destinations concerned that are more than 100 miles distant.

The witness for the Wabash also submitted a statement of rates, which he deems fair and reasonable. At Danville he proposes a differential of 28 cents, which is graded down with increased distance until it reaches 16 cents at the most remote points. To points on the defendant connections of the Wabash he suggests differentials of from 15 to 20 cents. Complainants object that the resulting rates would be too high. For example, the proposed rate from Lafayette to Danville, 46 miles, is 98 cents, whereas from Attica a rate of 84 cents, or 14 cents less, applies to all stations from Catlin, 31 miles, to Champaign, 62 miles. The proposed rate from Lafayette to Catlin, 52 miles, is \$1.10 to be extended to and including Cham-

paign, 84 miles. With few exceptions the proposed rates would be materially higher for like distances than those from Attica.

Although not theretofore mentioned in the complaint, the prayer for relief seeks also a compulsory absorption by the line-haul carriers of the charges of the Chicago, Indianapolis & Louisville and Lake Erie & Western for switching between the plants and the Wabash interchange. Apart from the defect in pleading, we have repeatedly declined to require absorption of switching charges, except where necessary to remove unjust discrimination or undue prejudice, although in appropriate cases we may prescribe reasonable joint rates between points on switching and trunk lines. *Crown Willamette Paper Co. v. A., T. & S. F. Ry. Co.*, 49 I. C. C., 613, and cases there cited. While the record suggests no disposition on defendants' part to withdraw the present switching absorptions on competitive traffic under lower rates, there is here no basis for any finding or order that might result in extending those absorptions; and the two named switching lines, not having been made parties, can not on this record be required to participate in joint rates. Whether the defendant Cleveland, Cincinnati, Chicago & St. Louis performs in its own right any switching for the plant on the Lake Erie & Western's rails does not appear.

We find that the rates assailed as applied to the transportation of sand and gravel, in carloads, from Lafayette, Ind., to destinations in Illinois to which commodity rates were published in tariff I. C. C. No. 4714 of defendant Wabash Railway Company are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed by more than the respective amounts per ton of 2,000 pounds next hereinafter stated the commodity rates contemporaneously applicable from Attica, Ind., to the same Illinois destinations on defendants' lines: Danville, 20 cents; beyond Danville to and including Sidney and Champaign, 15 cents; beyond Sidney to and including Gibson City, Effingham, Altamont, and Decatur, 12 cents; beyond Gibson City to and including Forrest, and beyond Decatur to and including Springfield and Litchfield, 10 cents; beyond Springfield and Litchfield, 8 cents; between Thomas and Rantoul, both inclusive, 20 cents; Prospect and Tomlinson, 15 cents; Assumption, 10 cents; Cadwell, 15 cents; between Chatham and Carlinville, both inclusive, 10 cents; between Westville and Ridge Farm, both inclusive, 20 cents; Mattoon and LeRoy, 12 cents; between Rosamond and Moro, both inclusive, 10 cents.

An appropriate order will be entered.

No. 10966.<sup>1</sup>

## SOUTHERN CARBON COMPANY

v.

ARKANSAS &amp; LOUISIANA MIDLAND RAILWAY COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted May 19, 1921. Decided July 16, 1921.*

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Rates on gasoline, in tank cars, from Fairbanks, Spyker, Guthrie, and other Louisiana points in the so-called Monroe district to Baton Rouge and New Orleans, La., via interstate routes, and to Vicksburg, Miss., Memphis, Tenn., St. Louis, Mo., East St. Louis, Cairo, and Chicago, Ill., Cincinnati, Columbus, Cleveland, and Toledo, Ohio, Pittsburgh and Philadelphia, Pa., Baltimore, Md., and New York, N. Y., found to have been and to be unreasonable. Reparation awarded on shipments from Spyker, Fairbanks, and Guthrie to Toledo. Measure of reasonable maximum rates prescribed for the future.

*H. J. Fernandez* for complainant and interveners.

*James M. Chaney, Henry G. Herbel, John F. Finerty, and Alex. M. Bull* for Director General of Railroads.

*James M. Chaney* for Missouri Pacific Railroad Company; *D. Lynch Younger* for Vicksburg, Shreveport & Pacific and Alabama & Vicksburg railway companies; and *W. L. Yancey* for Arkansas & Louisiana Midland Railway Company.

## REPORT OF THE COMMISSION.

## DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

*Esch, Commissioner:*

Exceptions were filed by defendant, the Director General of Railroads, as Agent, to the report proposed by the examiner.

Complainant, a corporation, is engaged in the manufacture of what is described as absorption-process gasoline, or liquefied petroleum gas, at Fairbanks and Spyker, La. By its complaint in No. 10966, filed October 20, 1919, it alleges that the rates on gasoline, in tank-car loads, from Fairbanks and Spyker to Toledo, Ohio, were and are unreasonable, unduly prejudicial to complainant, and unduly preferential of gasoline shippers at Shreveport, La. We

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<sup>1</sup> This report also embraces No. 11008, Same v. Director General, as Agent, Alabama & Vicksburg Railway Company, et al.; No. 11246, Same v. Same; and Portions of Fourth Section Applications Nos. 601 and 632.

are asked to award reparation on shipments made since January 1, 1919, and to establish reasonable and nonprejudicial rates for the future. The complaint in No. 11008, filed November 10, 1919, is identical with that in No. 10966, except that it names in addition to Spyker and Fairbanks the following Louisiana points as points of origin: Geddie, Beekman, Wardville, Sheltons, Bastrop, Perryville, Guthrie, Crosley, Oliver, Lamkin, and Sterlington; and the following points in addition to Toledo as destinations: Vicksburg, Miss., Baton Rouge and New Orleans, La., Memphis, Tenn., Chicago, East St. Louis, and Cairo, Ill., St. Louis, Mo., Cincinnati, Columbus, and Cleveland, Ohio, Pittsburgh and Philadelphia, Pa., Baltimore, Md., and New York, N. Y. At a hearing in the above cases held January 23, 1920, defendants insisted that the commodity manufactured and shipped by complainant was not gasoline and that therefore the complaints had not apprised them of the nature of the commodity in issue. This resulted in the filing on February 17, 1920, of the complaint in No. 11246, which is identical with that in No. 11008, except that it names the commodity as liquefied petroleum gas. The complaints in Nos. 10966 and 11008 were reopened and consolidated for hearing and disposition with No. 11246. Rates are herein stated in cents per 100 pounds and, except as otherwise noted, do not include the general increases authorized on July 29, 1920.

The Ouachita Natural Gas & Oil Company (Inc.), the Oscar Nelson Company, and the United Oil & Natural Gas Products Corporation, which have plants in operation or under construction at Sterlington, Lamkin, and Guthrie, respectively, for the manufacture of the same commodity as is produced by complainant, intervened in support of the complaints and ask reparation.

The various points of origin are within approximately 40 miles north of Monroe, La., and for convenience are referred to collectively as the Monroe district. With the exception of Lamkin and Sterlington, local to the Missouri Pacific, they are on the Arkansas & Louisiana Missouri, formerly known as the Arkansas & Louisiana Midland, which was not under federal control. Bastrop and Wardville are served by both lines. The Arkansas & Louisiana Missouri extends north from Monroe, where it connects with the Missouri Pacific and Vicksburg, Shreveport & Pacific, a distance of 52.5 miles to Crossett, Ark., where it connects with the Missouri Pacific and Chicago, Rock Island & Pacific, penetrating very rich gas fields.

Before discussing the propriety of the rates it is necessary to establish the identity of the commodity manufactured by complainant and interveners. Complainant insists that it is gasoline and in its presentation of testimony mentions the rates in issue and those used in comparison as applying on that commodity. Defendants insist

that it is not gasoline as the term is commonly understood. The process of manufacture may be described as follows: Natural gas is passed through a 6-inch pipe perforated at the bottom; this pipe lies inside of and near the bottom of a larger pipe, 20 inches in diameter, half filled with a so-called mineral seal oil, through which the escaping gas arises; during the period of contact the mineral seal oil absorbs the gasoline constituents in the gas; this product is then distilled, and the gasoline rising in vapor is condensed by being carried through a series of water-cooled pipes. The commodity is referred to as absorption-process gasoline as distinguished from gasoline obtained by the compression of petroleum gas or the distillation of petroleum oil. The Commission's regulations for the transportation of dangerous articles provide that when liquid condensates from natural gas, made either by the compression or absorption process, alone or blended with other petroleum products, are of vapor pressure at 100° F. not exceeding 10 pounds per square inch they must be described as gasoline or casinghead gasoline; and when the vapor pressure exceeds 10 pounds per square inch as liquefied petroleum gas. The evidence shows that all of complainant's and intervenor's shipments upon which reparation is claimed had a vapor pressure at 100° F. of not exceeding 10 pounds per square inch, and it may be assumed that future shipments will not exceed that pressure. We find that the commodity in question was and is gasoline. Our consideration of the complaints will therefore be confined to the rates on gasoline.

In so far as the destinations named in the complaints are concerned shipments have been confined to Toledo. Prior to the hearing of January 23, 1920, complainant had shipped 33 tank-car loads from Fairbanks and Spyker to Toledo over the lines of defendants via Monroe and Vicksburg, Miss. Charges were collected to Toledo at the following combination rates composed of fifth-class rates to New Orleans via Vicksburg and commodity rates beyond:

	From Fairbanks.	From Spyker.
Prior to March 25, 1919.....	85.6 cents.	88.1 cents.
March 25, 1919, to June 2, 1919.....	83.5 cents.	86 cents.
June 2, 1919, to January 23, 1920.....	96 cents.	96 cents.

An examination of the tariffs discloses that the defendants were in error in applying the above rates on complainant's shipments. A combination rate of 70 cents applied on the shipments which moved from Fairbanks prior to February 28, 1920, composed of the following rates in effect on June 24, 1918, plus an increase of 4.5 cents per 100 pounds: 16 cents, fifth-class rate to Monroe; 12 cents, commodity rate to Vicksburg; 22.5 cents, commodity rate to Cincinnati; and 15 cents, commodity rate to Toledo. A combination rate of 72

cents applied on the shipments which moved from Spyker during the same period, the fifth-class rate to Monroe on June 24, 1918, being 18 cents. On the shipments which moved from Fairbanks on and after February 28, 1920, a combination rate of 74.5 cents applied, composed of the following factors: 14 cents, fifth-class rate to Monroe; 24.5 cents, commodity rate to Vicksburg; and 36 cents, commodity rate to Toledo. A combination rate of 75.5 cents applied on the shipments which moved from Spyker on and after the date named, the fifth-class rate to Monroe being 15 cents. The shipments were therefore overcharged to the extent above indicated.

There are no joint through commodity rates on gasoline from any of the points in the Monroe district to any of the destinations named in the complaint, and the applicable rates are combinations similar to those above mentioned, the initial factors differing slightly from the various points of origin. As Spyker and Fairbanks are representative of the points in the Monroe district the combination rates from those points to all the destinations are shown in the following table, in comparison with the commodity rates from Shreveport, La., 97 miles west of Monroe, and points taking the same rates, hereinafter referred to as the Shreveport district:

To—	From Spyker.	From Fair- banks.	From Shreve- port.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Vicksburg, Miss. ....	39.5	38.5	16.5
Baton Rouge, La. ....	54	54	16.5
New Orleans, La. ....	60	60	16.5
Memphis, Tenn. ....	53.5	52.5	22.5
Chicago, Ill. ....	62.5	64.5	31.5
Cairo, Ill. ....	57.5	56.5	26.5
East St. Louis, Ill. ....	57.5	56.5	26.5
St. Louis, Mo. ....	57.5	56.5	26.5
Cincinnati, Ohio. ....	62	61	34
Columbus, Ohio. ....	73	72	47.5
Cleveland, Ohio. ....	75.5	74.5	51.5
Toledo, Ohio. ....	75.5	74.5	49.5
Pittsburgh, Pa. ....	77	76	51.5
Philadelphia, Pa. ....	93	92	56.5
Baltimore, Md. ....	92.5	91.5	56.5
New York, N. Y. ....	94.5	93.5	56.5

While asserting that the through rates are unreasonable, complainant's grievance is more particularly against the factors west of the Mississippi River. It is contended that rates to the respective destinations should be the same as or lower than those from the Shreveport district. The contention that the Monroe district rates should be even less than from Shreveport is premised upon the existence of similar transportation conditions surrounding the movement of traffic from both districts and the shorter distances from the Monroe district to the river cities.

The average short-line distance from the Monroe district to Vicksburg is stated by complainant to be 110 miles; to Baton Rouge, 239 miles; to New Orleans, 331 miles; and to Memphis, 237 miles. From points in the Shreveport district the average short-line distance given to Vicksburg is 208 miles; to Baton Rouge, 264 miles; to New Orleans, 342 miles; and to Memphis, 327 miles. The average fifth-class rate from the Monroe district to Vicksburg is stated as 36 cents; from the Shreveport district, 52.6 cents. The former is 68.4 per cent of the latter. On gasoline from Shreveport to Vicksburg the rate is 16.5 cents; and on traffic destined to points in southeastern territory only, on which the Vicksburg combination applies, the rate to that point is 14 cents. As 68.4 per cent of the 16.5-cent rate is less than 11.5 cents, and of the 14-cent rate about 9.5 cents, it is urged that the Monroe district should be accorded rates to Vicksburg no higher than 14 cents on local traffic and 12 cents on traffic destined beyond. Shreveport has commodity rates of 16.5 cents to Baton Rouge and New Orleans proper, and 16.5 cents and 14 cents, respectively, to those points on traffic for beyond. Complainant proposes the same rates for application from the Monroe district. The commodity rate from Shreveport to Memphis is 22.5 cents. The average fifth-class rate from the Monroe district is stated to be 93.7 per cent of the class rate from Shreveport, and complainant therefore suggests a commodity rate from the Monroe district of 21 cents. Other rates proposed by complainant are: To St. Louis, 25.5 cents, or 97 per cent of the Shreveport-St. Louis rate; to East St. Louis and Cairo the same as to St. Louis; to Chicago, 5 cents over St. Louis; and to the other destinations through rates based on the proposed rates to New Orleans or other river crossings plus the existing commodity rates beyond.

As representative of the rates from the Monroe district to destinations involved north of the Ohio River those from Spyker and Fairbanks to Toledo may be used in comparison with rates cited by complainant on refined petroleum from Oklahoma and Texas points, among them being the following:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Ardmore, Okla.....	Des Moines, Iowa.....	686	32
Do.....	Lincoln, Nebr.....	674	32.5
Oklahoma group.....	Peoria, Ill.....	610	27
Do.....	St. Louis, Mo.....	448	24.5
Brownwood, Tex.....	Kansas City, Mo.....	649	42.5
Burkburnett, Tex.....	do.....	536	30.5
Ranger, Tex.....	do.....	602	42.5
Spyker, La.....	Toledo, Ohio.....	901	75.5
Fairbanks, La.....	do.....	909	74.5



Although complainant's and interveners' operations are of comparatively recent origin, it is said that their product is competitive with that of the Shreveport and Oklahoma districts.

Defendants maintain that the rates applied from Shreveport and associated points are unduly low, having been depressed as a result of destructive competition of the carriers to secure traffic from the oil-producing fields. Moreover, they insist that the volume of tonnage from the Shreveport territory justifies materially lower rates than from the Monroe district; that solid trainloads of oil are shipped from the former while only individual movements are handled from the latter. It is also emphasized that hauls from Shreveport to New Orleans, Baton Rouge, Memphis, and St. Louis are over one-line routes, whereas the short-line routes from most of the Monroe district points to Memphis and St. Louis are over two lines and to Baton Rouge and New Orleans over two and three lines. In handling tank-car shipments in cars not owned by the carriers, defendants assert that there is an empty movement one way with no revenue to the carrier, and an expense of 1 cent per mile for the empty and loaded trip, paid to the owner of the car.

According to defendants it is true that gasoline as a general proposition moves on commodity rates. Nevertheless they contend that the fifth-class rates under the circumstances of this case are not out of proportion to the service performed.

The representative of the Arkansas & Louisiana Midland expressed the view that the Shreveport basis of rates should be established from the Monroe district and it appears that this defendant has cooperated with complainant in its effort to secure publication of joint commodity rates. Correspondence filed of record displays also a similarly favorable attitude on the part of the Railroad Administration during 1919. The insuperable obstacle, however, has been the inability of other carriers to agree with the Arkansas & Louisiana Midland on the question of divisions.

The rates cited from the Shreveport district do not appear to be on a materially lower basis than the rates from Oklahoma, which were established pursuant to *Midcontinent Oil Rates*, 36 I. C. C., 109. It is probable that the movement from the Monroe district will increase if it is accorded the Shreveport basis of rates. As the points in the Monroe district are appreciably nearer to the destinations named than those in the Shreveport district the fact that more lines are involved in transportation from the former may be disregarded. Shreveport can reach New Orleans, Memphis, and St. Louis over single lines, but there are other points taking the same rates as Shreveport from which the hauls are over more than one line. The Missouri Pacific has a direct line from Lamkin, Sterling-

ton, Bastrop, and Wardville to Memphis and St. Louis. Apparently the empty movement and payment for the use of private tank cars affect the traffic from the Shreveport district as well as that from the Monroe district.

As shown by complainant, the distances from Fairbanks, Spyker, and Shreveport to Toledo are 1,088 miles, 1,096 miles, and 1,174 miles, respectively. Under the rate of 49.5 cents which applied from Shreveport to Toledo prior to August 26, 1920, during the period most of complainant's shipments moved, the ton-mile earnings would be 9.1 mills from Fairbanks and 9.03 mills from Spyker. The 49.5-cent rate from Shreveport to Toledo was increased to 66 cents on August 26, 1920, but was reduced to 62.5 cents on September 28, 1920. Complainant shipped 77 tank-car loads of gasoline from Spyker and Fairbanks to Toledo during the period from March 18, 1919, to September 18, 1920. The United Oil & Natural Gas Products Corporation shipped three carloads of gasoline from Guthrie to Toledo in August, September, and October, 1920. The charges on complainant's shipments, also on those of the United Oil & Natural Gas Products Corporation, were paid in the first instance by the consignee but were deducted from the invoices in the settlement of accounts.

We find that the rates assailed on gasoline were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed the rates contemporaneously in effect on the same commodity from Shreveport to the same destinations. With respect to Baton Rouge and New Orleans this finding concerns only rates over interstate routes. We further find that complainant and intervener, the United Oil & Natural Gas Products Corporation, made the shipments as above described; that they paid and bore the charges thereon; that they were damaged thereby and are entitled to reparation, with interest, in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable. The exact amount of reparation due can not be determined upon the present record, and complainant and the intervener named should comply with rule V of the Rules of Practice. On February 10, 1920, the Arkansas & Louisiana Midland went into the hands of receivers, who were not made defendants in Nos. 10966 and 11008, but they may join in the payment of reparation. As previously indicated, this line has since been reorganized as the Arkansas & Louisiana Missouri, which is a party defendant in all of the complaints.

There were assigned for hearing with these cases portions of fourth section applications Nos. 601 and 632, by which the carriers named as parties thereto ask for authority to continue to charge for the

transportation of liquefied petroleum gas in tank cars from Shreveport to Toledo rates which are lower than the rates contemporaneously maintained on like traffic from Spyker, Fairbanks, and other intermediate points. Defendants state that Spyker, Fairbanks, and the other points of origin named in the complaints are not intermediate from Shreveport to Toledo via any route over which rates on this traffic apply. No action is necessary with respect to the fourth section applications.

An appropriate order will be entered in Nos. 10966 and 11008, and the complaint in No. 11246 will be dismissed.

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## THE ILLINOIS COAL CASES, 1920.

No. 10783.

## COAL TRADE BUREAU OF ILLINOIS

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY  
RAILROAD COMPANY, ET AL.

No. 10815.

## SPRING VALLEY COAL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

No. 11091.

## CENTRAL ILLINOIS COAL TRAFFIC BUREAU

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY, ET AL.

No. 11149.

## FIFTH AND NINTH DISTRICTS COAL BUREAU

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY, ET AL.

*Submitted December 16, 1920. Decided July 7, 1921.*

Upon complaints assailing as unreasonable, unjustly discriminatory, and unduly prejudicial the rates on bituminous coal from mines in the Fulton-Peoria, Third Vein, Springfield, and Belleville districts and from the so-called inner group, all in Illinois, to destinations in Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri, *Held:*

1. That the rates from the Third Vein, Springfield, and Belleville districts to the northwest are unduly prejudicial, to the extent that they are less than 70 cents, 30 cents, and 10 cents lower per ton, respectively, than the rates from the southern Illinois district to the same territory of destination.
2. That the rates from the Fulton-Peoria district to certain points in Iowa are unduly prejudicial to the extent that they are less than 70 cents and 40 cents lower per ton than the rates from the southern Illinois and Springfield districts, respectively, to the same destinations.

3. That the rates from mines in the inner group to St. Louis and points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, are unduly prejudicial to the extent that they are less than 22.5 cents lower per ton than the rates contemporaneously maintained from mines in the southern Illinois group to the same destinations.

*George C. Gale* and *James A. Fenelon* for complainant in No. 10783; *John S. Burchmore* and *Luther M. Walter* for complainants in Nos. 10815 and 11149; and *Stanley B. Houck* and *W. A. Holley* for complainant in No. 11091.

*A. P. Humburg*, *C. P. Stewart*, *Kenneth F. Burgess*, *F. H. Towner*, *K. L. Richmond*, and *Edward D. Mohr* for Director General of Railroads; *A. P. Humburg* for Illinois Central Railroad Company; *N. S. Brown* for Wabash Railroad Company; *C. P. Stewart* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *H. G. Herbel* and *C. C. P. Rausch* for Missouri Pacific Railroad Company; *Kenneth F. Burgess* and *Bruce Scott* for Chicago, Burlington & Quincy Railroad Company; *Frank H. Towner* and *Silas H. Strawn* for Chicago & Alton Railroad Company; *K. L. Richmond* for Chicago & Eastern Illinois Railroad Company; *Edward D. Mohr* for Louisville & Nashville Railroad Company; *H. L. Walker* and *Charles J. Ricey, jr.*, for Southern Railway Company; *W. M. Hopkins* for Springfield Terminal Railroad Company; and *O. H. Ashar* for Baltimore & Ohio Railroad Company, defendants.

*W. A. Holley* for Northwestern Traffic & Service Bureau; *Samuel D. Royse*, *Jonas Waffle*, and *C. B. Cardy* for Indiana Coal Trade Bureau, Knox County Coal Operators' Association, and Southern Indiana Coal Bureau; *R. W. Ropiequet*, *F. H. Harwood*, and *C. B. Cardy* for Coal Operators' Association and Illinois Coal Traffic Bureau; *Frank Lyon* for Northwestern Coal Dock Operators Association; *George Heaps, jr.*, and *Frank V. Dole* for Iowa Coal Operators Association; *H. G. Denison* for Roundup Coal Mining Company; *Thomas L. Phillips* and *C. E. Warner* for Southwestern Interstate Coal Operators Association; *J. H. Tedrow* for Chamber of Commerce of Kansas City, Mo.; *H. J. Smith* for city of Kansas City, Kans.; and *E. M. Harber* for city of Kansas City, Mo., interveners.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

These cases are related and will be disposed of in one report. Proposed reports were served upon the parties, exceptions were filed, and oral argument has been had in Nos. 10815, 11091, and 11149.

The complaints, all of which were filed prior to the termination of federal control, assail as unreasonable and unduly prejudicial the rates on bituminous coal from various groups of mines in the state of Illinois to points in Illinois, Indiana, Iowa, Minnesota,

Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri. Since intrastate rates are not subject to our jurisdiction, excepting under conditions not here present, interstate rates only will be considered. Although unreasonableness and in certain instances unjust discrimination are alleged, the outstanding issue is that of alleged undue prejudice in the relationship of rates between the southern Illinois district and the other important coal-producing districts of that state. Substantially the same rate situation was before us in *The Illinois Coal Cases*, 32 I. C. C., 659. Rates and differentials are stated herein in amounts per net ton, and, except as otherwise noted, do not include the general increases of 1920.

The complaints were filed by or on behalf of coal operators in the Third Vein, Fulton-Peoria, Springfield, and Belleville districts and the so-called inner group, in Illinois, hereinafter more fully described. The Illinois Coal Traffic Bureau representing operators in the southern Illinois district intervened in opposition to the complaints. Other opposing interventions were made on behalf of operators in Indiana, Iowa, and other states. Certain dock operators were also permitted to intervene.

The coal mines in Illinois have been grouped for rate-making purposes for about 84 years. In the northern part of the state are the Wilmington, Third Vein, and Fulton-Peoria districts. The Springfield district in central Illinois is the largest in point of area and includes mines in Sangamon, Christian, Macoupin, Logan, Menard, Moultrie, Shelby, Montgomery, and Madison counties. To the south of the Springfield district and immediately east and south-east of East St. Louis is the Belleville district. Farther to the southeast lies the southern Illinois district, embracing mines in Williamson, Franklin, Saline, and Gallatin counties and the eastern part of Perry county. East of the Belleville field is a smaller group, known as the Centralia district. There is also a small group in the eastern part of the state, centering at Danville. These various districts are described in our report in *The Illinois Coal Cases*, *supra*, and their locations are shown on a map on page 663 of that report. Briefly stated, the present grouping is the outgrowth of an adjustment made in 1887, known as the Faithorn award. Under that adjustment, as modified, the northern Illinois field, including the Wilmington, Third Vein, and Fulton-Peoria districts, was given the Chicago rate to points in northern Illinois, Wisconsin, Iowa, Minnesota, North Dakota, and South Dakota, and this rate was used as the base rate in determining differentials to be applied from the other groups.

The rate system then established was modified from time to time as the various fields developed. Immediately prior to the general increases of August 26, 1920, the general basis for rates from the

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Illinois groups to the northwest was as follows: Springfield district, 40 cents over northern Illinois; Centralia and Belleville, 60 cents over northern Illinois and 20 cents over Springfield; southern Illinois, 70 cents over northern Illinois, 30 cents over Springfield, and 10 cents over Belleville. These differentials, however, were not uniformly observed, but were departed from at certain points in the territory covered by the complaints. Furthermore, it is to be noted that the uniform increase of 35 per cent applied to these rates under *Increased Rates, 1920, 58 I. C. C., 220; Authority to Increase Rates, 58 I. C. C., 302*, had the effect of widening these differentials.

The western portion of the state of Indiana is also underlaid with extensive deposits of coal. The producing areas in that state are grouped for rate-making purposes, and are differentially related to northern Illinois. Farther to the south are the western Kentucky fields, described in *Ohio Valley Coal Operators Assn. v. I. C. R. R. Co.*, 53 I. C. C., 148. Rates from mines in those fields to Chicago and the northwest and to St. Louis are related differentially to the rates from southern Illinois to the same destination territory.

For convenient reference the rates assailed may be divided as follows: (1) Interstate rates to the Chicago district and to the territory north and west thereof hereinafter called the northwest; (2) rates to St. Louis, Mo.; (3) rates to the territory west of St. Louis; and (4) rates to Kansas City, Mo. Rates to the northwest are assailed in each of the complaints and will be considered first.

#### RATES TO THE NORTHWEST.

Different rates are maintained on coal moving via the several routes, although uniform rates are applicable via the principal routes. The rates on lump and fine coal via a majority of the routes, and average distances from the Springfield district and southern Illinois fields to representative destinations are shown in the following table:

To—	Average distances via short route.			Average distances via all routes.			Rates.					
	Springfield district.	Southern Illinois district.	Difference.	Springfield district.	Southern Illinois district.	Difference.	Springfield district.		Southern Illinois district.		Differential.	
	Lump.	Fine.		Lump.	Fine.		Lump.	Fine.	Lump.	Fine.	Lump.	Fine.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>						
Chicago, Ill. ....	191	308	117	237	354	117	\$1.31	\$1.31	\$1.55	\$1.55	\$0.24	\$0.24
Rockford, Ill. ....	196	330	134	275	416	141	1.52	1.52	1.72	1.72	.30	.30
Madison, Wis. ....	209	390	180	333	460	127	1.80	1.80	2.00	2.00	.30	.30
La Crosse, Wis. ....	389	510	121	462	594	132	2.35	2.35	2.65	2.65	.30	.30
St. Paul, Minn. ....	497	641	144	594	742	148	2.55	2.41	2.95	2.71	.30	.30
Burlington, Iowa. ....	153	337	184	184	366	182	1.55	1.40	1.90	1.90	.35	.50
Davenport, Iowa. ....	169	314	145	203	356	153	1.60	1.425	1.85	1.70	.25	.275
Clinton, Iowa. ....	194	339	135	233	368	135	1.64	1.425	1.85	1.70	.25	.275
Dubuque, Iowa. ....	246	399	153	326	481	155	1.85	1.85	2.05	2.05	.30	.30
Cedar Rapids, Iowa. ....	248	387	139	383	484	151	2.54	2.165	2.80	2.44	.26	.275
Fert Dodge, Iowa. ....	410	528	118	500	625	125	2.80	2.661	3.10	2.936	.30	.275

Rates from the Belleville district to representative points in the northwest and to Chicago are shown in the following table. Where the rates do not uniformly apply over the various routes the rate applicable over a majority of the routes has been selected. The distances shown are the average distances from the mines via the short route, and the average distances from all mines via all routes over which the rates are applicable.

To—	Distances.				Rates.		Differentials.
	Belleville group.		Southern Illi- nois group.		Belleville group.	South- ern Illi- nois group.	
	Via short route.	Via all routes.	Via short route.	Via all routes.			
	Miles.	Miles.	Miles.	Miles.	Cents.	Cents.	Cents.
Davenport, Iowa.....	259	278	311	357	170	183	13
Iowa City, Iowa.....	318	332	364	405	250	265	15
Des Moines, Iowa.....	357	474	437	520	260	275	15
Fort Dodge, Iowa.....	443	554	519	605	300	310	10
Keosauqua, Iowa.....	476	568	521	609	278	285	10
La Crosse, Wis.....	457	516	520	597	255	265	10
Wausau, Wis.....	529	569	573	653	280	270	10
Albert Lea, Minn.....	494	568	540	614	275	285	10
Mankato, Minn.....	575	685	635	706	275	285	10
Minneapolis, Minn.....	602	663	652	728	275	285	10
Aberdeen, S. Dak.....	656	916	892	960	390	390	10
Milwaukee, Wis.....	370	419	393	465	197	205	8
Chicago, Ill.....	277	306	303	369	147	165	8

Rates from the Third Vein and southern Illinois groups to representative destinations as compared with rates in effect in 1910, and illustrating the effect of the various general increases since that date, except those of 1920, are shown in the following table:

To—	From Third Vein group.			From Southern Illinois group.			Comparison.	
	Rate in 1910.	Present rate.	Increase.	Rate in 1910.	Present rate.	Increase.	Rate. <sup>1</sup>	Differential. <sup>2</sup>
	Cents.	Cents.	Per cent.	Cents.	Cents.	Per cent.	Cents.	Cents.
Minneapolis, Minn.....	140	215	53.6	210	285	35.7	822	37
Granite Falls, Minn.....	232	292	25.9	302	367	21.5	380	13
Mankato, Minn.....	150	215	43.3	220	285	29.5	317	33
Wausau, Wis.....	140	200	42.9	210	270	28.6	300	30
La Crosse, Wis.....	135	195	44.5	205	265	29.3	296	31
Fond du Lac, Wis.....	135	195	44.5	205	265	29.3	296	31
Milwaukee, Wis.....	85	135	58.8	148	205	38.5	235	30
Madison, Wis.....	100	150	50	150	200	33.3	225	25
Janesville, Wis.....	80	130	58.9	160	200	33.3	238	38
Dubuque, Iowa.....	110	165	50	150	205	36.6	225	20
Clinton, Iowa.....	85	140	64.7	130	185	42.3	214.1	29
Davenport, Iowa.....	75	130	73.4	130	185	42.3	225.4	40
Cedar Rapids, Iowa.....	140	215	53.6	215	280	30.2	330.2	50
Des Moines, Iowa.....	160	235	46.9	200	275	37.5	293.8	19
Fort Dodge, Iowa.....	185	240	29.7	255	310	21.6	330	20
Sioux City, Iowa.....	240	305	27.1	294	369	25.5	374	5

<sup>1</sup> Rates that would result from the southern Illinois group at same percentage of increase as from the Third Vein group.

<sup>2</sup> Difference between the present differential and the differential that would result from the same percentage of increase from the southern Illinois group as the Third Vein group.



The average distance from southern Illinois mines to Chicago via all routes is 117 miles in excess of the average distance from the Springfield mines. The corresponding differences in the average hauls to the Mississippi River crossings range from 125 to 182 miles. The average distance from the southern Illinois district to representative destinations via the short routes is from 34 to 80 miles in excess of the average distance from the Belleville group, the difference in a majority of cases being about 50 miles. At Chicago and Milwaukee the differences are considerably less. On the average the haul from southern Illinois exceeds that from the Third Vein group, the Springfield district, and the Belleville group by 200 miles, 125 miles, and 50 miles, respectively.

In No. 10815 operators in the Third Vein field contend that their prevailing differential of 70 cents under southern Illinois should be increased to \$1.50. In No. 11091 operators in the Springfield district who now have a differential of 30 cents under southern Illinois contend that a minimum reasonable differential would be 60 cents, but ask us to prescribe differentials ranging from 44 cents at St. Paul to 93 cents at Davenport. A differential of 40 cents is suggested by certain of the defendants, while other defendants contend that the present differential should not be disturbed. In No. 11149 the Belleville district operators assail their present differential of 10 cents under southern Illinois. Although 10 cents is the usual differential it is not in effect at all points. For example, the difference is 15 cents at Cedar Rapids, except on lump coal originating in the Belleville district on the Illinois Central, and 15 cents at Des Moines, Oskaloosa, and Ottumwa, Iowa. In No. 10783 operators in the Fulton-Peoria district do not seek to widen their present differential of 70 cents under southern Illinois, but they desire the restoration of that differential where it has been departed from under circumstances hereinafter described. The only interstate rates assailed in the latter complaint are those to certain destinations in Iowa.

The following table shows the present differentials, those sought by the respective complainants, and the approximate differences in distances from the various groups:

District.	Present differential under southern Illinois.	Differential sought.	Average difference in distance.
	Cents.	Cents.	Miles.
Third vein.....	70	150	200
Springfield.....	30	44 to 93	125
Belleville.....	10 to 15	25 to 35	50
Fulton-Peoria.....		70	.....

In *The Illinois Coal Cases, supra*, we declined to widen the differentials here assailed. Thereafter the rates were increased generally 10 cents as authorized in *1915 Western Rate Advance Case*, 35 I. C. C., 497; 15 cents as authorized in *The Fifteen Per Cent Case*, 45 I. C. C., 803; and by various amounts pursuant to general order No. 28 of the Director General of Railroads. Where groups were related by fixed differentials the increases provided by the latter order from the highest rated group were applied from all groups. Consequently, greater percentage increases were made in the rates from the Third Vein, Springfield, and Belleville groups than from southern Illinois. The preceding table showing the rates from the Third Vein and southern Illinois groups sets forth the respective percentages of increases since 1910. It is contended that by reason of these general increases conditions have changed since our decision in *The Illinois Coal Cases, supra*; that the value of the differentials there approved has been lessened by the increased cost of production and selling prices; and that the differentials should have been increased when the rates were increased. The question of horizontal versus percentage increases in rates on coal was before us in *Increased Rates, 1920, supra*, where we said at page 248:

Carriers serving the Pennsylvania-Ohio-West Virginia coal fields propose to continue the existing differentials in coal rates, and have worked out a scheme of rates to effect that result. Carriers in the southern and western groups propose to ignore existing differentials in coal rates within those groups. The proposal of the eastern lines to preserve existing relationships is approved, and carriers in the other groups should work out a similar plan for restoring the relative adjustments of coal rates now obtaining in those groups. An effort should be made promptly to devise rates in each group that will yield, as nearly as practicable, the same revenue in the aggregate as would be afforded by a straight percentage increase on the bases herein approved.

The principle above stated has been adhered to in *Coal from Kentucky, Tennessee, and Virginia*, 60 I. C. C., 166. The differentials of which complaint is here made can not be condemned solely on the ground that when measured by the volume of the rates they are relatively less than formerly.

It is apparently conceded that commercial competition was given careful consideration when the differentials between the various Illinois groups were originally established. Respecting this we said in *The Illinois Coal Cases, supra*, at page 667:

It is asserted of record that the differentials were not based on transportation conditions and were established without reference to transportation costs as between the several fields but to meet commercial conditions and to put all these coals on a reasonably equal competitive basis. So carefully in fact have the quality of coal, thickness or seam, wage scale, cost of mining, competition of other fields, etc., been taken into consideration in working out the present relationships between these fields that the statement was made on the argu-

ment that the consumers of the various coals in the northwest pay practically the same price for transportation per thermal unit, regardless of the mines from which they are shipped.

In 1887 the northern Illinois field produced 3,300,000 tons, or about one-third of the total production of the state. The output of the Springfield district, as originally established, was at that time about 1,750,000 tons a year, and that of the mines at Mount Olive, Staunton, and Worden, in Illinois, about 1,000,000 tons. The annual production in the Belleville district was about 1,500,000 tons, and that of Perry and Williamson counties, then comprising the southern Illinois field, was about 1,000,000 tons. In 1903 the coal production of northern Illinois began to decline and in 1912 that section produced only 528,000 tons of commercial coal, while in the latter year southern Illinois produced 15,000,000 tons, or about 30 per cent of the entire tonnage of the state. Our report in *The Illinois Coal Cases, supra*, contains figures showing the variations in the production of the Illinois districts up to the date of decision in those cases. The following table shows the tonnage produced in representative years since that time:

	1915	1916	1918	1919
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Entire state.....	56,172,556	62,283,226	88,306,200	73,751,721
Northern Illinois (Wilmington and Third Vein).....	4,322,128	4,305,539	4,251,561	3,155,901
Springfield.....	19,248,440	20,349,860	26,603,978	26,519,543
Belleville.....	5,371,745	6,082,885	11,530,546	9,372,461
Southern Illinois (including Du Quoin).....	21,137,637	24,802,611	33,455,831	30,063,897

Less coal was produced in Illinois during the year ended June 30, 1919, than in the preceding year, but the decrease in production was relatively less in southern Illinois, so that the ratio of its output to that of the entire state was greater than in any previous year. The decline in production in the Third Vein field, noted in our report in *The Illinois Coal Cases, supra*, continued thereafter. In 1917-18 the tonnage produced in that field was only 4.6 per cent of the total output for the state. In recent years operators in that field have been practically eliminated from most of the territory involved in these cases, except eastern Iowa and southern Wisconsin. Most of their coal is sold at points in northern Illinois, exclusive of Chicago, from which market they are practically shut out, though, with one exception, they have an advantage in distance over all other Illinois groups. Their situation is alleged by them to be due principally to competition from southern Illinois mines as well as from dock coal brought via the lakes from eastern mines during the summer months. Only a small percentage of the coal in the Third Vein field has been mined, and it is stated that if

market conditions were favorable the production of the district could be increased considerably. Similar evidence was introduced on behalf of the Springfield operators. It is pointed out that in 1905 there were 93 mines in operation in the Springfield district, compared with 69 in southern Illinois, while in 1918 there were only 79 producing mines in the Springfield district, as against 114 in southern Illinois.

The coal mined in southern Illinois is superior in quality to that produced in the other groups. Analyses show that 1 pound of Springfield coal contains, on the average, 10,596 British thermal units, compared with 12,138 in the same amount of southern Illinois coal. Prior to 1916 the mine prices of Springfield and southern Illinois coals were the same, notwithstanding the difference in quality, and that parity was continued by the Fuel Administrator during the war. Between 1916 and February, 1919, the date of the removal of the government price restrictions, the increased rates authorized in *The Fifteen Per Cent Case*, *supra*, and general order No. 28 of the Director General of Railroads, aggregating 45 cents per ton, became effective from both groups. At the return of normal competition in April, 1919, the mine prices of Springfield coal declined, while those of southern Illinois coal increased. The decline in price of Springfield coal and the relatively larger decrease in production for 1919 are stressed as being indicative that the rates from the respective fields do not now produce the commercial equality contemplated in the establishment of the adjustment complained of.

The rate adjustment assailed, although originally intended to equalize commercial conditions and thereby permit the various coals to compete in common markets, apparently never has fully equalized the difference in the quality of the coals and the admittedly lower cost of production in southern Illinois. Complainants contend that for the present adjustment there should be substituted one which will reflect more nearly the actual differences in transportation conditions.

Numerous rate exhibits were introduced by complainants, showing that the ton-mile earnings under the rates from southern Illinois are substantially lower than those yielded by the rates from the competing fields. An effort was made to show that many of the mines in southern Illinois are situated on spurs or branch lines, and that the cost of assembling shipments is greater than in the districts to the north. No cost figures were presented. The terminal service in southern Illinois appears to be no greater on the whole than in the other districts. The differentials requested by complainants are based largely upon differences in distance from the re-

spective groups. Considered from the standpoint of distance alone, however, the differentials here considered are not out of line with differentials approved by us in other proceedings.

In *Ohio Valley Coal Operators Asso. v. L. & N. R. R. Co.*, 52 I. C. C., 187, we prescribed a differential of 15 cents for an average difference in distance of 55 miles in the hauls from mines on the Louisville & Nashville in western Kentucky and from the Middlesboro-Jellico group in eastern Kentucky to Cincinnati; in *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523, we prescribed a similar differential for a difference in distance of approximately 65 miles in the hauls from the Appalachia group in southwestern Virginia and from the Middlesboro-Jellico group to points north of the Ohio River, the cost of transportation from the Virginia mines being relatively high; in *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, *supra*, we prescribed a differential of 25 cents for an average difference in distance of 88 miles in the hauls from mines in western Kentucky and from southern Illinois on the Illinois Central to Chicago, there being certain transportation conditions which adversely affect the movement from the more distant mines; in *Lake Cargo Coal Rates*, 46 I. C. C., 159, we prescribed a differential of only 28 cents for a difference in distance averaging 215 miles in the hauls from districts in West Virginia and eastern Kentucky on the one hand and districts in Ohio on the other; and in *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, *supra*, we approved a differential of 57.5 cents for an average difference in distance of 210 miles in the hauls over the Louisville & Nashville from mines in western Kentucky and from the Belleville group to East St. Louis.

A consideration of the facts of record points to the conclusion that the differences of 70 cents, 30 cents, and 10 cents assailed for average differences in distance of 200, 125, and 50 miles in the respective hauls from the Third Vein, Springfield, and Belleville districts and from southern Illinois are not unreasonable or otherwise unlawful.

The differentials assailed, however, have been disrupted by reason of the fact that uniform increases of 35 per cent following *Increased Rates, 1920*, have been applied to the rates from all groups in Illinois, and thus far the carriers have not worked out any plan for restoring the relative adjustment obtaining prior to that increase. The present situation is illustrated by the rates to Minneapolis. Prior to August 26, 1920, they were \$2.15 from northern Illinois and \$2.85 from southern Illinois, a difference of 70 cents. Thereafter they became \$2.905 and \$3.85, respectively, a difference of 94.5 cents. In this respect the present adjustment is more favorable to complainants, and less favorable to southern Illinois operators, than the adjustment assailed.

To a certain portion of the northwestern territory, especially to points in southern Wisconsin, the differential basis generally prevailing has not been observed. At the time of the hearing the rates from southern Illinois and from the Belleville district to Madison, Wis., were the same, and the rates from northern Illinois and from the Springfield group were only 50 cents and 20 cents, respectively, lower than the rate from southern Illinois. The rates from the latter district to Madison apparently were influenced by the Illinois intra-state scale which was applicable to destinations near the Illinois-Wisconsin line. As stated in *The Illinois Coal Cases, supra*, the scale referred to favors long hauls.

The differential basis herein described has not been observed from the Fulton-Peoria district to that portion of the state of Iowa lying east of a line drawn from Dubuque, westerly via the Chicago Great Western to Farley, Iowa, thence in a southwestern direction via the Chicago, Milwaukee & St. Paul to Ottumwa, thence southeasterly via the Chicago, Rock Island & Pacific to Keokuk, also including points on the Chicago, Burlington & Quincy between Ottumwa and Oskaloosa. Formerly the usual differentials were applied in making rates from the Illinois mines to all the territory above described except the points on the Burlington between Ottumwa and Oskaloosa. In 1916 the combinations on the river crossings made lower rates than those based on the generally observed differentials. Accordingly rates to the destinations referred to were published on the combination basis and the differential adjustment thereby destroyed. For instance, to Cedar Rapids the differential of 40 cents between the Fulton-Peoria and Springfield rates was replaced by rate differences ranging from 12.5 to 36 cents. The previous advantage of 70 cents over southern Illinois was reduced to various amounts between 40 and 62 cents. This alteration in adjustment has driven operators in the Fulton-Peoria district from many Iowa markets, and has similarly handicapped complainants in the Third Vein district.

Rates from Springfield and southern Illinois to Iowa, constructed by adding 40 and 70 cents, respectively, to those to the same territory of destination from the Fulton-Peoria district, would no longer be higher than those made by combination, because of the increase made in the latter pursuant to general order No. 28. The reasons for the departure from the differential basis have, therefore, disappeared. Defendants do not oppose the restoration of that basis, but urge that this should be accomplished by increasing the rates from the Springfield district and southern Illinois rather than reducing those from the northern Illinois mines.

We find that the rates assailed to the northwest are not unreasonable or otherwise unlawful except to the following extent: (1)

Rates from the Third Vein, Springfield, and Belleville districts to points in the northwest are and will be unduly prejudicial to operators in the districts named to the extent that they are less than 70 cents, 30 cents, and 10 cents per ton, respectively, below the rates contemporaneously maintained to the same destinations from the southern Illinois group; and (2) the rates from the Fulton-Peoria district to destinations in eastern Iowa referred to more specifically in the complaint in No. 10783 are and will be unduly prejudicial to the districts named to the extent that they are less than 40 cents and 70 cents per ton below the rates contemporaneously maintained to the same destinations from the Springfield and southern Illinois districts, respectively.

#### RATES TO ST. LOUIS.

Rates on coal from Illinois mines moving to and through St. Louis and East St. Louis are also on a group basis, but the grouping of the mines differs somewhat from that followed in fixing rates to the north and northwest. On this traffic the mines in the Belleville district and certain others, the most distant of which is 82 miles from East St. Louis, comprise what is known as the inner group, while most of the mines in the southern Illinois district are included in the so-called outer group, shown on the map at page 663 of our report in *The Illinois Coal Cases, supra*. The complaint in No. 11149 is directed, in part, against the relationship between the rates from the inner group and those from southern Illinois to St. Louis, East St. Louis, and points beyond.

The following table shows the rates to East St. Louis in effect over the Illinois Central from October 1, 1915, to the date of the hearing. Rates to St. Louis are 20 cents per ton higher than those to East St. Louis.

Date.	Local rates.			Proportional rates.		
	From Belleville.	From southern Illinois.	Differential.	From Belleville.	From southern Illinois.	Differential.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Oct. 1, 1915.....	37.5	52.5	15	25	40	15
July 1, 1917.....	52.5	67.5	15	40	55	15
June 25, 1918.....	75	90	15	62.5	77.5	15
Sept. 4, 1918.....	72.5	87.5	15			
Oct. 5, 1918.....				60	75	15

The Illinois Central and the Louisville & Nashville serve mines in both the Belleville and southern Illinois groups. The rates of the Louisville & Nashville from its mines in the southern Illinois district were 7.5 cents lower than those of the Illinois Central from mines

in the same general territory until recently, when the differential over the Belleville rates was increased to 15 cents, following our decision in *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, *supra*.

Prior to May 1, 1905, the differential maintained by the Illinois Central was 22.5 cents. On that date it was reduced to 10 cents, and since June 15, 1906, has been 15 cents. It is asserted that the reduction in the differential from 22.5 cents was forced by the St. Louis, Iron Mountain & Southern, now the Missouri Pacific, which constructed a line into the southern field in 1904 or 1905 and put in effect a lower basis of rates than the other carriers had theretofore maintained. The Missouri Pacific serves no mines in the Belleville field. In *The Illinois Coal Cases*, *supra*, the reductions in the rates from the Belleville group in 1905 were said to have been occasioned by the action of the Southern, which reduced the rates from its Belleville group mines in order to protect its operators against what was considered unfair competition on the part of certain short lines serving that field. In any event it appears that efforts were made shortly afterwards to restore the former differential of 22.5 cents, or to increase it to 25 cents, without avail.

The approximate average distance from all mines in the inner group to East St. Louis is 30.5 miles, and from southern Illinois mines 112 miles. The weighted average hauls from the inner and southern Illinois groups, based on actual movements throughout a period of years, are shown to be 23.72 miles and 126.08 miles, respectively. While the average distance from the inner group is therefore about 27 per cent of the average distance from the southern Illinois group, the local rate is 82.8 per cent and the proportional rate 80 per cent of the respective rates from the southern Illinois group.

One of the issues presented in *The Illinois Coal Cases*, *supra*, was whether the additional haul from the southern Illinois mines to St. Louis justified a differential in excess of 15 cents, and we found upon that record that it did not. At that time the local rate from the inner group to East St. Louis was 32 cents and that from southern Illinois 47 cents. Those rates yielded 10.5 mills and 4.2 mills, respectively, per ton-mile, based on actual average distances of 30.5 and 112 miles. The ton-mile earnings under the rates here assailed are 23.8 mills from the inner group and 7.8 mills from southern Illinois.

In *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, *supra*, we had before us the question of a differential in rates to East St. Louis from mines in western Kentucky served by the Illinois Central and Louisville & Nashville and those in the inner group on the lines of the same carriers. The average distance from mines in the inner group on the Illinois Central is 35 miles. The average dis-



tance from the Illinois Central's western Kentucky mines is 278 miles, a difference of 243 miles in favor of the inner group. For this additional haul we prescribed a differential of 57.5 cents, which, under the present relationship between the inner group and southern Illinois, is equivalent to 42.5 cents over the southern Illinois rate.

The average distance of all southern Illinois mines from East St. Louis exceeds that of the mines in the inner group by 81.5 miles, while the rate is only 15 cents higher. The difference in distance for weighted average hauls is 102 miles. The western Kentucky mines on the Illinois Central and Louisville & Nashville are 129 miles farther from East St. Louis, on the average, than the southern Illinois mines, and the rates are 42.5 cents higher. For a difference of 88 miles between the average hauls from western Kentucky and southern Illinois to Chicago we prescribed a differential of 25 cents in the case last cited, due consideration having been given to the fact that a portion of the haul from western Kentucky is south of the Ohio River, where the rates are normally on a higher level than north of the river.

Intervenors operating in the southern Illinois district oppose an increase in the present differential against their mines and state that during the five-year period from April 1, 1914, to March 31, 1919, mines in the Belleville group supplied 81 per cent of the Illinois coal consumed in St. Louis and East St. Louis, compared with 18 per cent from southern Illinois mines. Various reasons are offered by complainant in explanation of the relatively small movement of southern Illinois coal to the St. Louis market. It is stated that the operations of several short lines serving the Belleville group are confined exclusively to that field; that southern Illinois operators enjoy more through rates to other consuming points, especially on fine coal, and that the markets open to Belleville mines are thus limited; that as St. Louis is a highly competitive market the prices are low and the operators in southern Illinois prefer to dispose of their coal elsewhere. It is also asserted that if the southern Illinois operators, having superior coal, desired to accept the depressed prices prevailing in the St. Louis and East St. Louis market they could readily displace the inner group coal even with a differential considerably in excess of 15 cents.

Complainant asks for a differential of 40 cents at St. Louis. Certain of the defendants whose lines serve inner group mines suggest differentials ranging from 25 cents to 30 cents. Others decline to express any opinion on the subject.

Upon consideration of the record in No. 11149 we are of opinion and find that the rates on coal from the inner group to St. Louis are not unreasonable, but that they are, and for the future will be,

unduly prejudicial to operators in that group and unduly preferential of their competitors in the southern Illinois group to the extent that they are less than 22.5 cents per ton lower than the rates contemporaneously maintained from mines in the southern Illinois group to the same destinations.

RATES TO TERRITORY WEST OF ST. LOUIS.

Complainant in No. 11149 also asks that the differential prescribed at St. Louis be made applicable on coal moving through St. Louis to points beyond in Missouri and southern Iowa. To much of this territory, particularly on and north of the St. Louis-San Francisco extending from St. Louis through Springfield, Mo., except Kansas City and certain other points, the rates base on St. Louis and reflect the differential in effect at that point. These are joint rates built on the former proportionals of 25 cents and 40 cents to East St. Louis and local or proportional rates beyond. To Kansas City, Omaha, and other points, the rates from the Belleville group are, generally, the same as from East St. Louis and 40 cents lower than from southern Illinois.

Springfield, on the Missouri Pacific and the St. Louis-San Francisco; Jefferson City on the Missouri Pacific, Missouri, Kansas & Texas, and Chicago & Alton; and Moberly on the Wabash and Missouri, Kansas & Texas, are representative points in this territory. The rates to Moberly are \$1.70 from mines in the inner group and \$1.85 from the southern Illinois group. To Jefferson City the rate from the inner group is \$2, from the southern Illinois group \$2.15 via the Missouri, Kansas & Texas and Missouri Pacific, and \$2.25 via the Chicago & Alton. To Springfield a rate of \$2.55 is maintained from inner group mines and \$2.70 from southern Illinois mines on the Missouri Pacific.

Rates from the inner and southern Illinois groups to points in southeastern Missouri are not maintained on any definite relationship. The principal carriers operating in that part of Missouri are the Missouri Pacific, the St. Louis-San Francisco, and the Mississippi River & Bonne Terre. At the time of the hearing, coal from Illinois mines to stations on those lines moved generally through the East St. Louis gateways, and therefore the differences in distances from the inner and southern Illinois groups at destinations are the same as to East St. Louis. Prior to December 12, 1919, the route of the Illinois Southern, which extended in a southwesterly direction from Salem, Ill., through Centralia, Nashville, Coulterville, and Sparta, Ill., and Ste. Genevieve, Mo., to Bismarck, Mo., afforded the shortest distance to some of the points in that territory, but operation of that

line was suspended on the date mentioned, diverting such traffic as had formerly moved thereover to routes via East St. Louis, Cairo, or Thebes, Ill. To some few points the routes through Cairo and Thebes are shorter than through East St. Louis. The Illinois Southern has recently been reorganized and its name changed to the Missouri-Illinois. It is to be operated under joint control with the Mississippi River & Bonne Terre and is expected to haul a considerable coal tonnage from Illinois mines to points on that line.

There are no joint rates in effect from mines in the inner or southern Illinois groups to stations on the Missouri Pacific from St. Louis to Riverside, Bismarck, and other points in southeastern Missouri, rates being made by combination on St. Louis. The Missouri Pacific, however, maintains local rates from its mines in the southern Illinois group which are approximately the same as the combination rates from mines in the inner group, the rate to Bismarck being \$1.90. The average distance from the inner group mines to Bismarck, via East St. Louis, is 110 miles, and from southern Illinois mines on the Missouri Pacific 202 miles. To stations on the line of the St. Louis-San Francisco, paralleling the Mississippi River south of St. Louis, joint rates are generally maintained. The rates from Illinois Central mines are the same from both the inner and southern Illinois groups; from Louisville & Nashville mines a differential of 15 cents is observed, and from mines in the southern Illinois group on the Mobile & Ohio the rates as a rule are lower than from the inner group.

The Mississippi River & Bonne Terre, reaching an important coal-consuming territory, extends from Riverside, 30 miles south of St. Louis, to Doe Run, Mo., with various branches to points in the lead belt in eastern Missouri. Rates from mines in the inner group on the Louisville & Nashville to stations on the Mississippi River & Bonne Terre are maintained on the basis of 5 cents per ton lower than from its southern Illinois mines; the Mobile & Ohio maintains the same rates from both the inner and southern Illinois groups. Rates from Illinois Central mines are made by combination. In *Perry County Coal Corp. v. Director General*, 60 I. C. C., 250, we prescribed rates from Coulterville, O'Fallon, and Sparta in the inner group to points on the Mississippi River & Bonne Terre not in excess of those published by the Southern from its mines in the inner group to the same destinations.

We are of opinion that the rates from the Belleville district to points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, are not unreasonable, but that they are, and for the future will be, unduly prejudicial to operators in that district and unduly preferential of their competitors

in the southern Illinois district to the extent that the rates from the Belleville district are less than 22.5 cents per ton lower than those contemporaneously in effect from southern Illinois.

#### RATES TO KANSAS CITY.

Illinois coal moves into the Kansas City district over the rails of the Chicago & Alton, the Wabash, the Chicago, Burlington & Quincy, the Chicago, Rock Island & Pacific, and the Missouri Pacific, and their connections. The Chicago & Alton serves mines in the Springfield district in Illinois from which the route to Kansas City is through Louisiana, Mo., approximately 95 miles north of St. Louis. The average distance from these mines to Kansas City is 307 miles. The Wabash serves mines in the southern portion of the Springfield group, where it is overlapped by the inner group, and also in the Springfield group proper. That road crosses the Mississippi River at Hannibal, Mo., 120 miles north of St. Louis, and also at the latter point. The average distance from the Wabash mines to Kansas City via Hannibal is 367 miles. The average distances from the mines in the southern portion of the Springfield group are 419 miles via Hannibal and 312 miles via St. Louis.

Without setting forth in detail the history of the rates to Kansas City, it will suffice to say that until the summer of 1916 rates from the Springfield group mines were the same as the rates from East St. Louis. Rates from the Belleville group were 25 cents and from the southern Illinois group 40 cents higher, except from mines on the Southern. The rates from the mines last referred to, applicable in connection with the Chicago & Alton, were the same as those applying from the Springfield group and from East St. Louis. In *Coal to Missouri Stations*, 39 I. C. C., 520, we required cancellation of tariffs proposing to increase those rates 25 cents over the East St. Louis-Kansas City rates.

Being desirous of serving the Kansas City market, which had theretofore been supplied almost exclusively from the Kansas, Missouri, and Arkansas fields, the Chicago & Alton established a rate of \$1.25 per ton on fine coal from the Springfield district, effective August 22, 1916. This was a reduction of 65 cents under the previous rate. On October 15, 1916, it published rates of \$1.60 on fancy lump coal and \$1.50 on commercial lump and mine run. These rates were met by the Wabash, except that the latter's rate on fine coal was made \$1.35. The effect of these reductions was to establish rates on coal from the Springfield group mines on the Chicago & Alton and the Wabash materially lower than the rates from East St. Louis and mines in the Belleville group. When the Chicago & Alton published these rates we were asked by coal operators in Kansas and

certain carriers serving other districts to suspend the tariff, but we declined to do so. The present rates, resulting from the increases authorized in *The Fifteen Per Cent Case, supra*, and general order No. 28, as modified by later orders, are \$2.05 on fancy lump, \$1.95 on commercial lump and mine run, and on fine coal \$1.70 from Chicago & Alton and \$1.80 from Wabash mines. The rate on all grades from East St. Louis is \$2.45, which is the same as applies generally from the Belleville group.

Complainant in No. 11149 alleges generally that the rates from the Belleville group to destinations west of the Mississippi River, including Kansas City, are unreasonable and unduly prejudicial in comparison with the rates from other districts in Illinois, including the Springfield group, and from mines and groups in other states. Coal mined in Kansas, Missouri, Arkansas, and Oklahoma is sold in the Kansas City market in active competition with Illinois coal, and the Southwestern Interstate Coal Operators Association, representing operators in the southwestern field, intervened. Complainant's evidence has been confined to the relationship between the inner and southern Illinois groups and does not touch on the Springfield adjustment. So far as Kansas City is concerned, complainant is satisfied with the relationship between the rates from the inner and southern Illinois groups.

The members of the Southwestern Interstate Coal Operators Association have no interest in the relationship between the rates from the inner and southern Illinois groups; their interest, as shown by the record, is in the rate maintained by the Chicago & Alton and Wabash on fine coal from the Springfield district, which, they contend, is too low and has resulted in displacing southwestern coal in the Kansas City market. Civic and commercial interests in Kansas City intervened in support of the rates from the Springfield district. Upon consideration of the issue raised by these interveners we are of opinion that it should not be dealt with in this proceeding.

The records in these cases disclose a conspicuous lack of uniformity with respect to the maintenance of rates on fine coal from the various Illinois districts. The same differentials should be established on fine coal as on other grades.

No order will be issued at this time, but the defendants will be expected to establish rates in conformity with our findings within 90 days. If such rates are not established within that time the matter may again be brought to our attention. In revising their tariffs defendants should establish rates which will yield as nearly as practicable the same revenue in the aggregate as is afforded under the present rates.

COMMISSIONER EASTMAN dissents.

No. 11864.

DUQUESNE COAL &amp; COKE COMPANY ET AL.

v.

PITTSBURGH & WEST VIRGINIA RAILWAY  
COMPANY ET AL.

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*Submitted May 14, 1921. Decided July 19, 1921.*

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Interstate rates on bituminous coal from mines west of Pittsburgh, Pa., in the states of Pennsylvania and West Virginia, on the Pittsburgh & West Virginia Railway, to points north and east found unduly prejudicial. Undue prejudice ordered removed.

*C. F. Taplin* for complainants.

*G. G. Early* for Pittsburgh & West Virginia Railway Company; *James Stillwell* and *Guernsey Orcutt* for Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company and Pennsylvania Railroad Company; *Francis R. Cross* for Baltimore & Ohio Railroad Company; *George E. Shaw*, *John J. Heard*, and *Reed, Smith, Shaw & Beal* for Pittsburgh & Lake Erie Railroad Company; and *Charles S. Belsterling* for Bessemer & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

CLARK, *Chairman*:

Complainants are owners and operators of coal mines west of Pittsburgh, Pa., in the states of Pennsylvania and West Virginia, on the Pittsburgh & West Virginia Railway. They allege that the interstate rates maintained by defendants for the transportation of bituminous coal, in carloads, from the mines in question to certain destinations north and east are unreasonable and unduly prejudicial to the extent they exceed those applying from other mines in the vicinity of Pittsburgh. They seek a readjustment, including the establishment of joint rates in certain cases where combination rates now apply. Joint rates are applicable to most of the destinations involved, but not via all routes. Complainants seek additional routes in order that they may be in a position to market their product more freely, particularly in times of car shortage and congestion. Rates are stated herein in amounts per net ton and do not include the increases of August, 1920.

22 I. C. C.

Exceptions were filed by complainants and defendants to the report proposed by the examiner, and the case was orally argued before us.

The Pittsburgh & West Virginia extends westwardly from Pittsburgh through western Pennsylvania and northern West Virginia to Pittsburgh Junction, Ohio, where it joins the Wheeling & Lake Erie Railroad running north to Lake Erie ports. It connects with the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Panhandle, at Bridgeville, Pa., a short distance west of Pittsburgh, and with the West Side Belt Railroad at West Belt Junction, which is just outside of Pittsburgh. From West Belt Junction the West Side Belt takes a northerly direction to West End Junction, Pittsburgh, where it connects with the Pittsburgh & Lake Erie Railroad, while in a southerly direction it extends to points of connection with the Baltimore & Ohio and Union railroads and through the latter with the Bessemer & Lake Erie Railroad. The West Side Belt and the Pittsburgh & West Virginia are under a common management.

Complainants' mines, with the exception of one just outside of Pittsburgh, are from 30 to 40 miles, averaging perhaps 33 miles, west of that city. They are served only by the Pittsburgh & West Virginia. Mines of complainants' competitors are on the Panhandle; West Side Belt; Montour; Pittsburgh & Lake Erie; Baltimore & Ohio; Pennsylvania; and Pittsburgh, Chartiers & Youghiogheny railroads. Some are nearer and some are farther from Pittsburgh than are complainants' mines. However, the coal does not always move via Pittsburgh. The weighted average distances from complainants' mines and from mines on the Montour; Pittsburgh, Chartiers & Youghiogheny; and West Side Belt to points of connection with the Pittsburgh & Lake Erie are shown as 31.32, 14.41, 9.54, and 7.32 miles, respectively. Several of the roads just mentioned, together with many other roads in the east that are parties to the rates in question, are not named as defendants.

Complainants' coal is valuable mainly for steam purposes, while that from the other mines in question is used principally for producer gas purposes, but nevertheless a considerable portion of complainants' coal is sold in competition with that from the other mines, and especially is this true during abnormal periods such as prevailed during the war.

The rates assailed are to destinations on or reached via the Pittsburgh & Lake Erie, Bessemer & Lake Erie, Baltimore & Ohio, and Pennsylvania railroads. Where joint rates are in effect from complainants' mines they are 10 cents higher than from mines on the

**West Side Belt.** This basis, so far as rates in connection with the Pittsburgh & Lake Erie and the Baltimore & Ohio are concerned, was fixed in *Pittsburgh & Southwestern Coal Co. v. W.-P. T. Ry. Co.*, 31 I. C. C., 660. The question there considered was the establishment of joint rates from mines on the Pittsburgh & West Virginia, then the Wabash-Pittsburgh Terminal Railway, to destinations on or reached via the two roads named. The mines were alleged to be unduly prejudiced by the refusal of the carriers to provide them with joint rates while maintaining such rates from mines on the West Side Belt. We found, among other things, that the mines on the West Side Belt were, on the average, about 11 miles from the junctions, that traffic from mines on the Pittsburgh & West Virginia required generally from 23 to 40 miles additional haul, and that considerable expense was incurred in making delivery to connections of the Pittsburgh & West Virginia. We held that the rates were unreasonable and unduly prejudicial, and directed the defendants therein to establish joint rates to the destinations there involved on the basis above stated. Apparently during the past two or three years complainants have not been vitally affected by the rate differences against them, but it is testified that with the return of normal conditions a differential of 10 cents will be a matter of serious consequence where complainants seek to sell against competitors.

The Pittsburgh & West Virginia supports complainants' principal contentions, but the trunk line carriers vigorously oppose the relief sought. Their general defense is that mines on their own lines, generally east of Pittsburgh, can supply all the coal for the destination territories in question. Such coal as would move from complainants' mines would displace coal originating on the trunk lines. The movement would involve a haul through the congested Pittsburgh district, and the trunk lines contend that it is therefore in the public interest to discourage traffic from complainants' mines to the east and north. Each of the trunk lines offered evidence to the effect that with conditions as they were at the time of the hearing, June, 1920, it would be almost impossible for them to handle any additional business from the Pittsburgh & West Virginia, and that it was impracticable adequately to improve or materially enlarge the terminals in the Pittsburgh district, because of the mountainous character of the country. During the war the Fuel Administration did not allow coal from west of Pittsburgh to go east except upon special permit. However, coal is moved via Pittsburgh from points east thereof to destinations north and west, as well as from mines other than complainants' west of Pittsburgh to points north and east.



In addition to the joint rates already in effect to the north and east, defendants point out that complainants have rates to the Ohio lake ports and the markets west of Pittsburgh on the Pittsburgh basis. They contend that these rates afford complainants adequate outlets for the coal they produce, and call attention to the fact that the production of complainants' mines has increased enormously in recent years.

Relief similar to that here sought was asked of the United States Railroad Administration but was denied after hearing.

The rates assailed may be divided into four groups, according to the destinations:

1. Rates to points in the United States on or reached via the Pittsburgh & Lake Erie, Bessemer & Lake Erie, Baltimore & Ohio, and Pennsylvania railroads, respectively, west of the Genesee River as far as the Niagara frontier and the Buffalo-Pittsburgh lines of these carriers. The Genesee River has its source in central-northern Pennsylvania and follows a northerly course through Rochester, N. Y., to Lake Ontario.

2. Rates to points on or reached via these lines in the United States and Canada east of the Genesee River, except tidewater points.

3. Rates to tidewater points via the Pittsburgh & Lake Erie, Baltimore & Ohio, and Pennsylvania railroads, respectively.

4. Rates to points in the Pittsburgh switching or industrial districts on or reached via the Pittsburgh & Lake Erie, Baltimore & Ohio, and Pennsylvania railroads, respectively.

#### DESTINATIONS WEST OF THE GENESSEE RIVER.

To destinations west of the Genesee River the Pittsburgh & West Virginia has joint rates via the Baltimore & Ohio, Pittsburgh & Lake Erie, and Bessemer & Lake Erie, respectively, and their connections. These rates are 10 cents higher than from mines in the vicinity of Pittsburgh, except that to Buffalo, N. Y., and some neighboring points the Bessemer & Lake Erie joins the Pittsburgh & West Virginia in according complainants the Pittsburgh rates, such rates having been established prior to the decision in *Pittsburgh & South-western Coal Co. v. W.-P. T. Ry. Co.*, *supra*. Via the route of the Panhandle and the Pennsylvania complainants have no joint rates, although mines on the Panhandle near Pittsburgh are kept on the Pittsburgh basis, joint rates being maintained by the Panhandle in connection with the Pennsylvania. Likewise rates on the Pittsburgh basis apply from group-A points on the Montour; Pittsburgh, Chartiers & Youghiogheny; West Side Belt; and Pittsburgh & Lake Erie. Via the Pennsylvania joint rates are asked only to the "Buffalo terminal district."

## DESTINATIONS EAST OF THE GENESSEE RIVER.

To destinations east of the Genessee River, complainants have, via the Pittsburgh & Lake Erie, joint rates 10 cents higher than apply from mines on the West Side Belt and other lines in the vicinity of Pittsburgh. Complainants also have joint rates via the Baltimore & Ohio, but via this route the difference against them and in favor of the mines on the Baltimore & Ohio is 25 cents. Traffic from complainants' mines requires about 30 miles greater haul than that from the mines on the Baltimore & Ohio. Via the Bessemer & Lake Erie and the Pennsylvania, respectively, combinations of local rates apply from complainants' mines. Joint rates are maintained from mines on the Pittsburgh, Chartiers & Youghiogheny via the Pennsylvania lines, and from mines on the Montour to some destinations via the Bessemer & Lake Erie.

## TIDEWATER DESTINATIONS.

To tidewater points the rates are in a chaotic condition. For instance, the Pittsburgh & West Virginia has joint rates via the route formed by that road and the Pittsburgh & Lake Erie and Western Maryland railroads, which are 10 cents higher than apply from the so-called Westmoreland district east of Pittsburgh. Group-A mines on the West Side Belt and the Pittsburgh & Lake Erie have rates 10 cents lower than complainants' via the same routes east of Pittsburgh, being on the Westmoreland basis. However, from group-B mines on the Baltimore & Ohio; Panhandle; Montour; Pittsburgh, Chartiers & Youghiogheny; and Pittsburgh & Lake Erie the rates via the Pennsylvania Railroad are 5 cents higher than complainants pay via the Pittsburgh & Lake Erie-Western Maryland route. Complainants ask that all these rates be put on a common basis, by increases in some and reductions in others. They also ask joint rates to tidewater via the Pennsylvania lines. For these lines it is contended that the rates from mines on the Panhandle to tidewater via the Pennsylvania were established under pressure of mine operators upon officers of the Panhandle, and that they were objected to by officials of the Pennsylvania Railroad. Early in 1918, after the rates had been in effect more than a year, tariffs were filed proposing their cancellation, but the tariffs were suspended by us pending investigation. Later, owing to the pendency of *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, the suspended tariffs were canceled. Shortly thereafter the carriers' properties went under federal control, and no further action in respect of the rates has been taken.

## THE PITTSBURGH INDUSTRIAL DISTRICT.

Complainants are at a disadvantage in marketing coal in the Pittsburgh industrial district. This phase of the case directly involves, however, only the rates from a few mines in West Virginia, the traffic from the mines in Pennsylvania being intrastate. The Pittsburgh & West Virginia has never gained an entrance into the Pittsburgh industrial district with its own rails, and accordingly a haul over two or more lines is required, the coal being delivered to connections at junction points outside the city. The only rates available to complainants are the combinations of local rates on the junctions, except that there are some joint rates via certain lines to points 15 to 25 miles beyond Pittsburgh, which may be applied to the Pittsburgh district under an intermediate-rate clause in the tariffs. Some of complainants' principal competitors are located on lines which have their own rails into the city, and their rates are lower than those charged complainants for equal or shorter hauls. Distance, however, seems to be a factor of secondary consequence so far as the coal traffic in this vicinity is concerned, the rates apparently being based in large measure on considerations of business expediency. They apply from large groups, and no fixed or uniform basis is observed by the different carriers. From the Pittsburgh & West Virginia mines the combination rates paid by complainants to the Pittsburgh district ranged at the time of the hearing from \$1.30 to \$1.60 for hauls of from 40 to 80 miles. By virtue of the intermediate-rate clause, which makes the rates to points beyond applicable to Pittsburgh, complainants have rates of from \$1 to \$1.10 for deliveries in the Pittsburgh district on the Pittsburgh & Lake Erie and the Panhandle. However, the rates paid by complainants' competitors who reach the district by single-line hauls of similar length are from 60 to 90 cents, or about the same as the Pittsburgh & West Virginia's factors from the West Virginia mines to the junctions with its connections, thereby affording them an advantage over complainants about equal to the factors beyond the Pittsburgh & West Virginia's junctions, except as to the rates that are applicable to the Pittsburgh district under the intermediate-rate clause referred to above. Presumably the differences in favor of complainants' competitors have been increased by the rates established in August, 1920. Most of the carriers which serve Pittsburgh have coal mines on their own lines, and there are but few instances in which one line permits another to reach the city on joint rates from the mines. However, where there are such joint rates they are but slightly higher than the single-line rates. For instance, the Pittsburgh & Lake Erie has some short-haul joint rates in connection with the Montour, which at

the time of the hearing were 80 cents as compared with 70 cents for single-line hauls of similar length. The mines on the Montour are about 18 miles nearer the Pittsburgh & Lake Erie's junction than are complainants' mines. It should be said that the Pittsburgh rate of the carriers reaching Pittsburgh does not apply to all points in the Pittsburgh district, but arbitraries ranging from 5 to 15 cents per ton are added in some instances where delivery is made on the tracks of a connection.

Complainants seek joint rates in connection with the Pennsylvania, Pittsburgh & Lake Erie, and Baltimore & Ohio, respectively, as delivering lines, substantially the same as the single-line rates charged their competitors for hauls of similar length. If joint rates are established, they must be high enough to afford both or all participants a fair division. Defendants contend that the single-line rates are not high enough to be fairly divided between two or more carriers, and point out that there are hundreds of coal mines on their own lines in the vicinity of Pittsburgh which can reach Pittsburgh by single-line hauls. They contend that under the circumstances a two-line haul involves undue transportation waste.

#### CONCLUSIONS.

Upon consideration of all the facts, we find that the rates assailed are not unreasonable but that they are and for the future will be unduly prejudicial as indicated below.

To Buffalo, N. Y., the rates from complainants' mines via the route of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad and the Pennsylvania Railroad are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by more than 10 cents per net ton the rates contemporaneously charged via the Pennsylvania Railroad from mines on the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad now accorded the Pittsburgh rate.

To points east of the Genesee River on or reached via the Pittsburgh & Lake Erie Railroad, Bessemer & Lake Erie Railroad, Pennsylvania Railroad, or Baltimore & Ohio Railroad, defendants' rates are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by more than 10 cents per net ton defendants' rates contemporaneously in effect to the same destinations via the same routes from mines on the Montour Railroad; Pittsburgh, Chartiers & Youghiogheny Railroad; or West Side Belt Railroad.

To tidewater destinations the rates from complainants' mines via the route of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad and the Pennsylvania Railroad are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by

more than 10 cents per net ton the rates contemporaneously charged from mines on the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad now accorded the Pittsburgh rate.

To points in the Pittsburgh switching district the rates from complainants' mines in connection with the Pittsburgh & Lake Erie Railroad are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by more than 10 cents per net ton the rates contemporaneously charged via that route to the Pittsburgh district from mines on the Montour Railroad.

An appropriate order will be entered.

62 I. C. C.

## CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

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I. & S. 1283. DEMURRAGE CHARGES AT SEWELLS POINT, VA. Proposed increases in demurrage charges on coal and coke loaded in cars of 200,000 lbs. capacity or over, at Sewells Point, Va. *H. P. Ware* and *C. B. Cumings* for protestants. *W. S. Saunders* for respondent. Proceeding discontinued, June 6, 1921.

I. & S. 1308. HEATER SERVICE FOR PROTECTION OF FRESH FRUITS AND VEGETABLES. Rates, rules, regulations, and practices of carriers for heater service for protection of fresh fruits and vegetables. *F. D. Dow* and *O. W. Mittendorf* for protestants. *L. T. Wilcox*, *G. H. Nelson*, and *R. C. Dearborn* for respondents. Proceeding discontinued, June 6, 1921.

I. & S. 1314. PROPORTIONAL RATES ON LUMBER, MINNESOTA, IOWA, AND SOUTH DAKOTA TO CENTRAL AND WESTERN TRUNK LINE TERRITORIES. Proposed increases in rates on lumber from Minnesota, Iowa, and South Dakota to central and western trunk line territories. *F. Carnahan* for protestants. No appearances for respondents. Proceeding discontinued, July 12, 1921.

I. & S. 1318. COMBINATION RULE ON PETROLEUM AND PETROLEUM PRODUCTS TO THE SOUTHEAST. Proposed increases in rates on petroleum and petroleum products to southeastern territory. *W. H. Müller* for protestants. No appearances for respondents. Proceeding discontinued, Aug. 6, 1921.

I. & S. 1323. TRANSIT PRIVILEGES ON EXPORT GRAIN TO TEXAS PORTS. Proposed increase in transit charges on grain to Texas ports. *F. G. Willis*, *R. Willetts*, *W. R. Scott*, and *E. H. Tipton* for protestants. *H. G. Herbel*, *G. H. Hamilton*, and *C. C. P. Rausch* for respondents. Proceeding discontinued, July 12, 1921.

I. & S. 1343. RULES AND REGULATIONS GOVERNING UNROUTED SHIPMENTS FROM NEW ENGLAND. Proposed increases in rates, rules, and regulations on unrouted shipments from New England. *H. Müller* for protestants. No appearances for respondents. Proceeding discontinued, June 28, 1921.

11392. HARLAN COUNTY COAL OPERATORS' ASSO. et al. v. L. & N. R. R. Co. et al. On account of car shortage, complainants ask that coal cars belonging to the Louisville & Nashville R. R. be returned to that carrier to points at their mines in Kentucky and Tennessee. *J. V. Norman* and *C. D. Boyd* for complainants. *F. H. Harwood* and *O. B. Cardy* for intervener. *W. J. Larrabee*, *F. R. Cross*, *C. G. Austin, jr.*, *Wilson & Rector*, *W. J. Stevenson*, *F. W. Gwathmey*, *H. G. Herbel*, *J. M. Chaney*, *M. M. Joyce*, *D. C. Edwards*, *K. F. Burgess*, *K. L. Richmond*, *W. F. Peter*, *N. H. Loomis*, *H. A. Scandrett*, *O. W. Dynes*, *J. N. Davis*, *C. J. Rlacy, jr.*, *S. M. Rogers*, *T. J. Norton*, *F. E. Andrews*, *R. H. Widdicombe*, *D. F. Lyons*, *B. W. Scandrett*, *W. F. Evans*, *O. Brown*, *J. R. Bell*, *J. Stillwell*, *F. H. Wood*, *O. W. Durbrow*, *E. Westlake*, and *A. P. Humburg* for defendants. Dismissed on request of complainants, Dec. 11, 1920.

11452. RASTETTER & RASTETTER v. DIRECTOR GENERAL, AS AGENT. Rates on automobile steering-wheel wood rims from Fort Wayne, Ind., to Detroit, Mich. *R. W. Dick* for complainant. *J. F. Finerty* for defendant. Transferred to Special Docket for adjustment, Aug. 6, 1921.

11456. EAGLE COTTON OIL CO. v. DIRECTOR GENERAL, AS AGENT, A. G. S. R. R. Co. Rate on one carload of coal from Dudley, Ala., to Meridian, Miss. *T. P.*

*Goodwin* for complainant. *C. J. Rizey, jr.*, and *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment, July 20, 1921.

11527. *WEST VIRGINIA RAIL CO. v. C. & O. RY. CO., DIRECTOR GENERAL, AS AGENT, et al.* Rates on new iron and steel rails from Huntington, W. Va., to points on the Norfolk & Western Ry., west of Salem, Va. *W. P. Tingley* and *L. M. Walter* for complainant. *D. L. Younger* and *J. S. Patterson* for defendants. Complaint satisfied. Dismissed June 6, 1921.

11718. *STANDARD RED CEDAR CHEST CO. v. A. G. S. R. R. CO., DIRECTOR GENERAL, AS AGENT, et al.* Rates on red cedar lumber from points in North Carolina, South Carolina, Alabama, Florida, Mississippi, and Tennessee to Alta Vista, Va. *J. H. Fishback* for complainant. *C. J. Rizey, jr.*, *F. W. Gwothmey*, *R. Pope*, and *J. F. Finerty* for defendants. Dismissed on request of complainant, July 5, 1921.

12227. *DRISCOLL COAL & WOOD CO. et al. v. DIRECTOR GENERAL, AS AGENT.* Rates on coal from Walsenburg and Trinidad districts, Colo., to Pueblo, Colo. *L. P. Kelly* for complainants. *R. L. Ellis* for interveners. *J. Q. Dier* and *J. G. McMurray* for defendants. Dismissed on request of complainants, June 6, 1921.

12269. *PORTLAND TRAFFIC & TRANSPORTATION ASSO. v. O.-W. R. R. & N. CO. et al.* Rates on grain from points in Idaho and eastern Washington to Portland, Oreg. *W. C. McCulloch*, *F. M. Dudley*, *O. P. Kellogg*, *M. Nicholson*, *R. Beeuwkes*, *J. W. McCune*, *C. O. Bergan*, *L. L. Thompson*, *R. W. Cliford*, and *O. O. Calderhead* for complainants. *C. E. Cochran* for defendants. Dismissed on request of complainant, June 6, 1921.

12304. *INDIANA BRICK MFRS.' ASSO. v. A., T. & S. F. RY. CO. et al.* Rates on brick and articles taking brick rates, including hollow building tile from points in the "Wabash Valley Group" to points in Illinois, Wisconsin, Michigan, Minnesota, Iowa, and Missouri. *R. B. Coapstick* for complainant. *O. R. Hillyer* for intervener. *E. P. Vernia*, *D. F. Lyons*, *B. W. Scandrett*, *W. A. Northcutt*, *R. H. Widdicombe*, *P. B. Warren*, *Winston*, *Strawn & Shaw*, *K. L. Richmond*, *J. Stillwell*, *F. T. Dorety*, *R. J. Hagman*, *M. R. Watte*, *T. E. Bond*, *A. P. Humburg*, *K. F. Burgeas*, *M. M. Joyce*, *D. Evans*, *O. Brown*, *H. G. Herbel*, *J. M. Chaney*, *T. J. Norton*, *F. E. Andrews*, *F. C. Powell*, *N. S. Brown*, *O. W. Dynes*, *J. N. Davis*, *C. J. Rizey*, and *A. B. Enoch* for defendants. Dismissed on request of complainant, June 6, 1921.

12355. *LAKE CHARLES NAVAL STORES CO. v. DIRECTOR GENERAL, AS AGENT, A. & W. RY. CO. et al.* Rates on staves, carloads, from McNary, La., to Lake Charles, La., and other points on the Missouri Pacific R. R. *F. E. Potts* for complainant. *L. J. Aches* for defendants. Dismissed on request of complainant, July 5, 1921.

12356. *COBONA COAL CO. v. DIRECTOR GENERAL, AS AGENT.* Demurrage charges on lump coal at Ocala, Fla. *A. W. Vogtle* for complainant. *J. F. Finerty* for defendant. Complaint satisfied. Dismissed July 5, 1921.

12406. *OAKLAND CHAMBER OF COMMERCE et al. v. S. P. CO.* Rates for transportation of interstate traffic between Oakland piers and Berkeley and Alameda, Calif., when destined beyond or received from Oakland piers by water. *Glenzor*, *Clews & Van Dine* and *Bishop & Bahler* for complainants. *F. H. Wood*, *J. R. Bell*, *C. W. Durbrow*, and *E. Westlake* for defendant. Dismissed on request of complainant, June 6, 1921.

12472. *MILLER PETROLEUM CO. et al. v. A., T. & S. F. RY. CO. et al.* Rates on petroleum crude oil, carloads, from Lazarus, Vernon, and LeRoy, Kans., to Smiths Center, Kans. *C. Thorne* for complainants. *M. G. Roberts*, *C. S. Burg*, *H. A. Scandrett*, *J. M. Chaney*, *J. M. Souby*, *T. J. Norton*, *F. E. Andrews*, *H. G.*

*Herbel*, and *A. B. Brock* for defendants. Dismissed on request of complainants, June 6, 1921.

12498. SILICA SAND PRODUCERS TRAFFIC ASSO. et al. v. P. M. RY. CO., DIRECTOR GENERAL, AS AGENT, et al. Rates on sand from Ottawa, Wedron, Millington, and Oregon, Ill., to Muskegon, Mich. *J. H. Kane* and *R. E. Ripley* for complainants. *J. C. Jones* and *F. W. Held* for defendants. Dismissed on request of complainants, July 12, 1921.

12509. ANACONDA COPPER MINING CO. v. DIRECTOR GENERAL, AS AGENT, A., T. & S. F. RY. CO. et al. Rates on grinding pebbles from points in California to Anaconda, Mont. *W. P. Coughlin* for complainant. *J. C. Maring*, *J. F. Finerty*, *T. J. Norton*, *F. E. Andrews*, *H. A. Scandrett*, *G. N. Smith*, *J. V. Lyle*, *J. T. Hammond, Jr.*, and *H. A. Halsied* for defendants. Dismissed on request of complainant, July 5, 1921.

12543. COLORADO FUEL & IRON CO. v. DIRECTOR GENERAL, AS AGENT, C. & W. RY. CO. Rates on spelter, carloads, from Blende, Colo., to Minnequa, Colo. *R. L. Hearon* for complainant. *J. F. Finerty* for defendants. Dismissed on request of complainant, June 6, 1921.

12580. MATHIESON ALKALI WORKS v. DIRECTOR GENERAL, AS AGENT, A. & V. RY. CO. et al. Switching and terminal allowances at Saltville, Va. *W. LaRoe, Jr.*, for complainant. *C. H. Blatchford*, *E. P. Verma*, *A. Dodson*, *H. W. Bickel*, *K. L. Richmond*, *A. H. Lossow*, *W. A. Northcutt*, *J. F. Finerty*, *J. S. Patterson*, *Williams*, *Loyall & Tunstall*, *W. C. Plunkett*, *N. S. Brown*, *C. Brown*, *T. J. Norton*, *F. E. Andrews*, *W. J. Stevenson*, *C. W. Gwathmey*, *O. W. Dynes*, *J. N. Davis*, *R. H. Widdicombe*, *M. B. Pierce*, *W. F. Kinter*, *A. P. Humburg*, *M. G. Roberts*, *C. J. Rizey*, *D. L. Younger*, *E. D. Hotchkiss*, and *J. C. Rich* for defendants. Dismissed on request of complainant, July 5, 1921.

12606. STANDARD SHIPBUILDING CORP. v. DIRECTOR GENERAL, AS AGENT, E. R. R. CO. Demurrage charges on crane boards at Shooters Island, N. Y. *Larkin*, *Ratkbone & Perry* for complainant. *J. F. Finerty* and *M. B. Pierce* for defendants. Complaint satisfied. Dismissed July 12, 1921.

12611. ALAN WOOD IRON AND STEEL CO. v. DIRECTOR GENERAL, AS AGENT, P. R. R. CO. et al. Delivery, spotting, and switching service at Philadelphia rate district, Pa. *A. A. Woodruff* and *C. B. Wood* for complainant. *J. F. Finerty* for defendants. Complaint satisfied. Dismissed July 5, 1921.

12637. PUBLIC SERVICE COMMISSION OF NEVADA v. S. P. CO. Class rates from San Francisco and Sacramento, Calif., to points in Nevada and Utah. *B. Wright* for complainant. *F. H. Wood*, *J. R. Bell*, *C. W. Durbrow*, and *E. Westlake* for defendant. Dismissed on request of complainant, July 5, 1921.

12658. CONE v. C., B. & Q. R. R. CO. Rates on sand and gravel, in carloads, from Cone Spur, Nebr., to points in Iowa. *Powell & Wilson* for complainant. No appearances for defendant. Complaint satisfied. Dismissed July 12, 1921.

12661. THE NATIONAL LIVE STOCK EXCHANGE et al. v. A. A. R. R. CO. et al. Car furnishing for shipments of cattle, swine, sheep, lambs, and goats between points in official classification territory. *E. C. Brown*, *D. O. Mosier*, and *A. E. Baker* for complainants. *P. E. Blanchard* and *R. D. Rynder* for interveners. *J. W. Allison*, *K. L. Richmond*, *E. F. Flintoft*, *E. P. Verma*, *R. W. Barrett*, *W. A. Northcutt*, *E. D. Hotchkiss*, *C. L. Andrews*, *R. H. Widdicombe*, *M. M. Joyce*, *D. Evans*, *W. J. Stevenson*, *W. A. Larrabee*, *Williams*, *Loyall & Tunstall*, *W. C. Plunkett*, *W. W. Barnett*, *R. L. Burnap*, *W. F. Kinter*, *C. J. Rizey*, *P. B. Warren*, *F. R. Cross*, *N. S. Brown*, *C. Brown*, *M. B. Pierce*, *O. W. Dynes*, *J. N. Davis*, *J. Stillwell*, *T. J. Norton*, *F. E. Andrews*, *D. L. Younger*, *A. P. Humburg*, and *J. C. Bills* for defendants. Dismissed on request of complainant, July 5, 1921.



12666. *THE WELCH GRAPE JUICE Co. v. A. C. L. R. R. Co., DIRECTOR GENERAL, AS AGENT, et al.* Rates on bottled grape juice, in carloads, from Westfield, N. Y., North East, Pa., and Lawton, Mich., to New Orleans, La., points intermediate thereto, and points in Kentucky, Tennessee, Alabama, Mississippi, Louisiana, and Florida. *G. D. Eddy* for complainant. *K. L. Richmond, W. A. Northcutt, J. F. Finerty, J. Stillwell, E. P. Vernia, W. J. Stevenson, F. W. Gwathmey, J. C. Bills, C. Brown, C. J. Rizey, and A. P. Humburg* for defendants. Dismissed on request of complainant, July 5, 1921.

12706. *AMARILLO BOARD OF CITY DEVELOPMENT v. Ft. W. & D. C. Ry. Co. et al.* Class rates from Amarillo, Texas, to points in New Mexico. *H. Palmer* for complainant. *H. H. Williams* for intervener. *Thompson, Barwise, Wharton & Hiner, T. J. Norton, F. E. Andrews, B. E. Whitted, J. Q. Dier, A. B. Enoch, and W. A. Hawkins* for defendants. Dismissed on request of complainant, July 5, 1921.

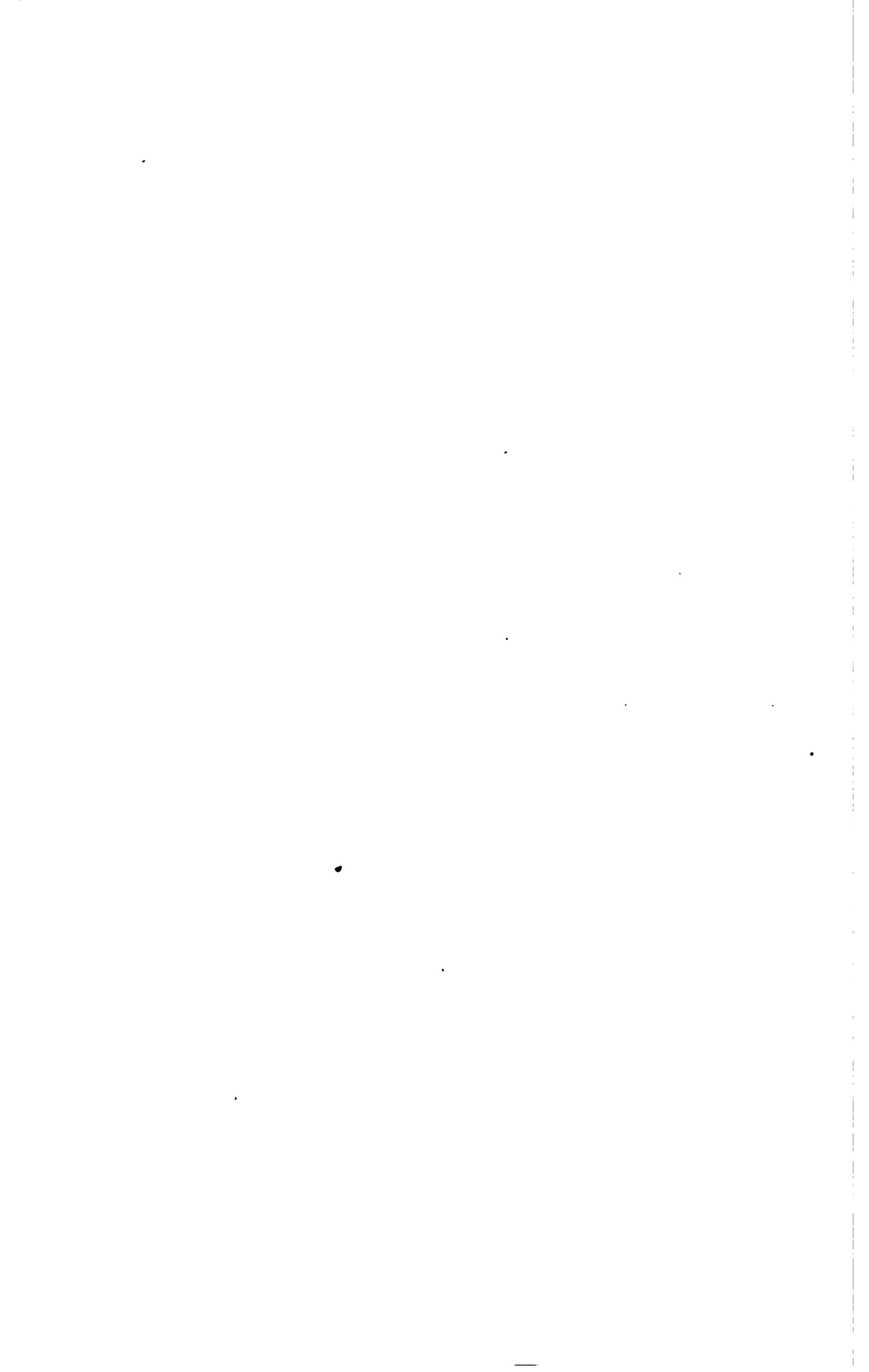
12766. *THE MILLER PETROLEUM Co. et al. v. DIRECTOR GENERAL, AS AGENT, A., T. & S. F. Ry. Co. et al.* Rates on petroleum, crude oil, and fuel oil, carloads, from Lazarus, Kans., to Smith Center, Kans. *O. Thorne* for complainants. *M. G. Roberts, J. F. Finerty, H. A. Scandrett, J. M. Souby, T. J. Norton, F. E. Andrews, A. B. Enoch, and C. S. Berg* for defendants. Dismissed on request of complainants, July 5, 1921.

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## REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING TIME COVERED BY THIS VOLUME.

5200 and 5200 (Sub-No. 1). *Wheeler-Motter Mercantile Co. v. A., T. & S. F. Ry. Co.* June 13, 1921. Reparation for \$3,250.62, on shipments of cotton piece goods originating in New England and the south from points on the Mississippi River to points on the Missouri River, on account of unreasonable rate.

7686. *Heider Mfg. Co. v. B. & O. R. R. Co.* June 13, 1921. Reparation for \$137.27, on shipments of steel bars, plates, and angles from Johnstown, Pa., to Carroll, Iowa, on account of unreasonable rate.

8986 and 9416. *Sharpless Co. v. P. B. & W. R. R. Co., and Continental Condensed Milk Co. v. Same.* July 12, 1921. Reparation for \$521.32, on shipments of evaporated and condensed milk from points in Pennsylvania and Maryland to points in official classification territory, on account of unreasonable rates.

9023 (Sub-No. 24, 29) and 9023 (Sub-No. 41). *Horst Co. v. A., T. & S. F. Ry. Co.; Rosewald & Co. v. C. M. & St. P. Ry. Co.; and Mohr & Bro. v. S. P. Co.* July 12, 1921. Reparation for \$2,888.73, on shipments of hops from points in California to other points in the United States, on account of unreasonable charges.

9452. *Crown Willamette Paper Co. v. Willamette Nav. Co.* July 12, 1921. Reparation for \$2,391.26, on shipments of sulphite pulp from West Linn, Oreg., to Boston, Mass., and New York, N. Y., on account of unreasonable charges.

9885. *Feeders' Supply Co. v. C., B. & Q. R. R. Co.* June 13, 1921. Reparation for \$21.80, on shipments of cottonseed-hull bran from East St. Louis, Ill., to Kansas City, Mo., on account of unreasonable rate.

10104. *Clark & Bolce Lumber Co. v. J. & N. W. Ry. Co.* July 12, 1921. Reparation for \$269.17, on shipments of lumber from North Jefferson, Tex., to points in Missouri and other states, on account of unreasonable rates.

10865. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.* July 12, 1921. Reparation for \$10,256.89, on shipments of sand from complainant's plant near Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., on account of unreasonable charges.

10413. *Virginia-Carolina Chemical Co. v. Director General.* July 12, 1921. Reparation for \$1,177.90, on shipments of fertilizer from Mobile, Ala., to points in Louisiana, on account of unreasonable rates.

10423 and 10423 (Sub-No. 1). *M. B. & B. T. Ry. v. B. & O. R. R. Co., and St. Joseph Lead Co. v. Same.* July 5, 1921. Reparation for \$9,555.88, on coal from mines in southern Illinois to destinations on the Mississippi River & Boone Terre Ry. in Missouri, on account of unreasonable rates.

10542. *Montgomery Chambers of Commerce v. L. & N. R. R. Co.* July 12, 1921. Reparation for \$34.50, on shipments of sugar from New Orleans, La., to Montgomery, Ala., on account of unreasonable rates.

10588, 10588 (Sub-No. 1), and 10589. Southern Cotton Oil Co. v. S. Ry. Co. June 13, 1921. Reparation for \$988.60, on shipments of coconut oil from Charleston, S. C., to Savannah, Ga., Babbitt, N. J., and Buffalo, N. Y., on account of unreasonable rates.

10640. National Refining Co. v. A. T. & S. F. Ry. Co. June 13, 1921. Reparation for \$6,759.45, on shipments of petroleum and its products from Coffeyville, Kans., to Healdton, Okla., on account of unreasonable rates.

10676. Mitsui & Co. v. Q. W. R. R. & N. Co. June 13, 1921. Reparation for \$20,407.06, on shipments of peanuts from Seattle and Tacoma, Wash., to Houston, Tex., on account of unreasonable rate.

10726. Central Steel Co. v. C. & O. Ry. Co. July 12, 1921. Reparation for \$7,804.83, on shipments of coal from points in the Kanawha district of West Va., to Massillon, Ohio, on account of unreasonable rate.

10751. Miller v. N. P. Ry. Co. June 13, 1921. Reparation for \$2,811.52, on shipments of logs from a logging spur near Wilkeson, Wash., to Tacoma and Kenndale, Wash., on account of excessive and illegal charges.

10770 and 10770 (Sub-Nos. 1 and 2). American Tobacco Co. v. S. P. Co.; Lorillard Co. v. Same; and Gorman Co. v. N. P. Ry. Co. July 12, 1921. Reparation for \$11,640.39, on shipments of leaf tobacco from Tacoma, Wash., and Vancouver, B. C., to New York, N. Y., on account of unreasonable rates.

10822. General Chemical Co. v. D., L. & W. R. R. Co. July 12, 1921. Reparation for \$11,806.16, on shipments of nitrate of soda from north Atlantic ports to points in central territory, on account of unreasonable rates.

10948. Southwest Cotton Co. v. A. E. R. R. Co. July 12, 1921. Reparation for \$75,299.07, on shipments of cotton from points in Arizona to Chester, Pa., New Bedford, Mass., and other eastern points, on account of unreasonable rates.

11036. Seaboard By-Product Coke Co. v. D., L. & W. R. R. Co. June 13, 1921. Reparation for \$18,107.97, on shipments of coal from the Connellsville district to Seaboard, N. J., on account of unreasonable rates.

11147 and 11120. Buckeye Cotton Oil Co. v. S. Ry. Co., and Same v. S. A. L. Ry. Co. July 12, 1921. Reparation for \$1,568.29, on shipments of cotton seed from Charlotte, N. C., to Augusta and Atlanta, Ga., on account of unreasonable rates.

11186. Shaffer Oil & Refining Co. v. M., K. & T. Ry. Co. June 13, 1921. Reparation for \$3,573.55, on shipments of gas oil from Cushing, Okla., to Neodesha, Kans., on account of unreasonable rate.

11210. Chevrolet Motor Co. v. C., R. I. & P. Ry. Co. July 12, 1921. Reparation for \$27,424.98, on shipments of auto-body wood work from St. Louis, Mo., and Ionia, Mich., to Oakland, Calif., on account of unreasonable rates.

11264. National Fire-Proofing Co. v. P. R. R. Co. June 13, 1921. Reparation for \$167.78, on shipments of coal from Haydenville, Ohio, to Perth Amboy, N. J., on account of unreasonable charges.

11309. Chatterton & Son v. P. M. Ry. Co. July 12, 1921. Reparation for \$4,423.14, on shipments of beans from Pere Marquette stations in Michigan to various destinations, on account of unreasonable rates.

11430 and 11449. Standard Oil Co. v. Director General. June 13, 1921. Reparation for \$3,599.41, on shipments of petroleum from Bowling Green, Ky., and Rugby Road, Tenn., to Louisville, Ky., on account of unreasonable rates.

11451. Goodman Drilling Co. v. F. W. & D. C. Ry. Co. July 12, 1921. Reparation for \$607.60, on shipments of oil-well outfits and supplies and wrought iron pipe from Burkburnett and Wichita Falls, Tex., to Mansfield and Gahagan, La., on account of unreasonable rates.

11501. Consolidation Coal Co. v. Director General. June 18, 1921. Reparation for \$2,244.29, on shipments of coal from mines near Gregg and Bell, Pa., to Washington and Uniontown, D. C., and Alexandria, Va., on account of unreasonable rate.

11537. Pittsburgh Crucible Steel Co. v. P. R. R. Co. June 18, 1921. Reparation for \$80.64, on shipments of dolomite from Shocks Mills, Pa., to Midland, Pa., on account of unreasonable rates.

11544. Barrett Co. v. P. & R. Ry. Co. July 12, 1921. Reparation for \$3,679.94, on shipments of coal tar from South Bethlehem, Pa., to Gray's Ferry, Philadelphia, Pa., on account of unreasonable rate.

NOTE.—The amount of reparation awarded in the above cases aggregates \$258,744.96.

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## TABLE OF COMMODITIES.

[The numbers in parentheses after citation indicates where commodity is considered.]

**ACID, MURIATIC.** Jersey City, Newark, and Bayway, N. J., to Gibbstown and Carney's Point, N. J., 681.

**ACID, SULPHURIC:**

Denver, Colo., to Galena, Tex., 189.

Jersey City, Newark, and Bayway, N. J., to Gibbstown and Carney's Point, N. J., 681.

**APPLES.** Watsonville, Calif., to Phoenix, Ariz., 500.

**ASPHALT, PETROLEUM.** Kansas. Increase in rates, 440.

**BANANAS.** New York Harbor lighterage points and Harlem River, N. Y., to Providence, R. I., and Worcester, Mass., 179.

**BARRELS, EMPTY.** Westville, Okla., from Carthage and Republic, Mo., 45.

**BARS, COLD ROLLED OR DRAWN STEEL.** Galveston, Tex., from Beaver Falls, Pa., Cumberland, Md., and Atlantic seaboard territory, via New York, N. Y., 253.

**BEANS.** Kansas. Increase in rates, 440 (445).

**BILLETS.** Ohio River, points south of, to Cairo, Ill., 701.

**BLINDS.** Dubuque, Clinton, and Muscatine, Iowa, to Texas common-point territory and El Paso, Tex., 721.

**BOARD, WOOD PULP.** Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., 48.

**BOARDS, AUTOMOBILE FLOOR, RUNNING, AND TOR.** Detroit, Mich., to Melrose, Calif., 175.

**BOILER PARTS.** Waverly, Wash., to Gunnison, Utah, 483.

**BOILERS.** Waverly, Wash., to Gunnison, Utah, 483.

**BOLTS.** Ohio River, points south of, to Cairo, Ill., 701.

**BOLTS, IRON AND STEEL.** Kansas City, Mo., to Galveston and Beaumont, Tex., and points taking same rates, 9.

**BRICK:**

Kansas. Increase in rates, 440.

Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.

Utah, Wyoming, Washington, Montana, and Idaho to and from Utah, Wyoming, Washington, Montana, and Idaho, 298.

**CAKE, NITER.** McGill, Nev., from Bacchus and Garfield Smelter, Utah, and Hercules, Calif., 22.

**CANNED GOODS:**

Colorado to Oklahoma, 483.

Kansas. Increase in rates, 440 (445).

**CARBON BLACK.** Dewar, Okla., to Seattle, Wash., and San Francisco, Calif., for export, 133.

**CARS, GASOLINE MOTOR.** Minneapolis, Minn., to San Diego, Calif., 675.

**CARS, MOTOR.** San Francisco, Calif. Demurrage and storage, 689.

**CASES, DISPLAY AND SHOW.** Official classification territory. Rating, 279.

**CATSUP, CANNED.** Colorado to Oklahoma, 483.

**CATTLE.** Birmingham, Ala., from New Orleans and Port Chalmette, La., 627.

**CATTLE, BEEF.** Kansas City, Mo.-Kans., to Oklahoma City, Okla., 171.



**CEMENT:**

Kansas. Increase in rates, 440 (448).

Sellersburg, Ind., to Kentucky and Tennessee, 362.

**CHILE CON CARNE.** Official classification, southern classification, and south-western territories. Peddler car service, 375.

**CHILI SAUCE, CANNED.** Colorado to Oklahoma, 433.

**CLASS RATES:**

Kansas to and from Oklahoma and Texas, 596.

Mississippi River crossings, Memphis, Tenn., to New Orleans, La., inclusive, to and from Louisiana and Arkansas, 464.

Texas common-point territory to and from Memphis, Tenn., Vicksburg and Natchez, Miss., New Orleans, Baton Rouge, and other Louisiana points, and Arkansas and Texas, 596.

**CLASS AND COMMODITY RATES:**

North Carolina to and from South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware, 64.

Portland, Oreg., and Vancouver, Wash., to and from Idaho, Oregon, and Washington, 633.

**CLAY.** Dickey Clay Spur, Mo., to Deepwater, Mo. Minimum charge, 223.

**COAL:**

Eldorado, Ill. Trackage agreements, 265.

Fairmont, W. Va., and New River district, W. Va. Car distribution, 269.

Gillespie, Ill., to Missouri, Kansas, Nebraska; Iowa, South Dakota, North Dakota, Minnesota, Michigan, Indiana, and Wisconsin, 335.

Herrin, Ill. Trackage agreements, 259.

Indiana. Increase in rates, 643.

Kansas. Increase in rates, 440 (444).

Kentucky mines to Missouri and Arkansas, 696.

Mercer-Butler and Pittsburgh districts, Pa., to Perth Amboy, Natco, and Port Murray, N. J., 49.

Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada, to Naches, Eureka, and Mabton, Wash., 491.

Mount Hope Mineral Railroad points. Junction-point rates, 157.

Spangler, Pa. Refusal to establish a switch connection, 181.

Utah, Wyoming, Washington, Montana, and Idaho to and from Utah.

Wyoming, Washington, Montana, and Idaho, 293.

Washington from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada, 491.

Western territory. Reconsignment rules and charges, 655.

**COAL, ANTHRACITE.** Lehigh and Wyoming regions, Pa., to Jersey City, N. J., 211.

**COAL, BITUMINOUS:**

Casselman, Pa. Car furnishing, 429.

Cedar Rapids, Iowa, from McRoberts and Jenkins, Ky., 633.

Illinois mines to Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri, 741.

Illinois mines to Tallulah, La., 41.

Midland, Ind., to Grayling, Mich., 39.

Pennsylvania mines to Canton, Ohio, 723.

Pennsylvania and West Virginia mines to various destinations, 753.

- COAL, SLACK.** Deering, Kans., to Caney, Kans., 113.  
**COAL, SMITHING (PREPARED).** Coketon, W. Va., to Lamar, Colo., 643.  
**COAL, SMITHING.** Douglas, W. Va., to Chicago, Ill., reconsigned to Oakdale, Calif., and subsequently to Los Angeles, Calif., 497.  
**COAL, SOFT.** Springfield, Ill., from mines near Springfield, 695.  
**COCKTAILS, CANNED OYSTER.** Colorado to Oklahoma, 433.  
**COFFEY.** Kansas. Increase in rates, 440 (445).  
**COKE.**  
 Baltimore, Md., for export. Demurrage, 533.  
 Gary, Ind. Intraplant movement, 349.  
 Seaboard, N. J., to New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and New Jersey, 317.  
 Western territory. Reconsignment rules and charges, 655.  
**COLLARS, STEEL HORSE.** Minnesota Transfer, Minn., from Davenport, Iowa, and Rock Island, Ill., 629.  
**COMPOUNDS, CLEANING, SCOURING, AND WASHING.** Southern territory. Rating, 307.  
**COPRA.** Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., 113.  
**CORN, BROOM.** Kansas. Increase in rates, 440 (447).  
**COTTON:**  
 Marianna and Forrest City, Ark., to New Orleans, La., and Boston, Mass., concentrated and compressed at Helena, Ark., 303.  
 Mississippi to Natchez, Miss., concentrated and compressed, and reshipped to New Orleans, La., 110.  
 Monroe, West Monroe, and Ruston, La. Compression, concentration, and reshipment, 26.  
**COTTON, COMPRESSED.** Opelousas, La., to Houston, Tex., 495.  
**COTTONSEED.** Henderson, N. C., to Dublin, Ga., 263.  
**CREAM:**  
 Chicago, Ill., from Colgate, DuPlainville, Waukesha, and Mukwonago, Wis. Minimum charge, 427.  
 Kansas. Increase in rates, 440.  
**DIET.** Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.  
**DOORS.** Dubuque, Clinton, and Muscatine, Iowa, to Texas common-point territory, and El Paso, Tex., 721.  
**DUST, FLUR.** Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.  
**ENGINES.** Waverly, Wash., to Gunnison, Utah, 483.  
**EXCAVATED MATERIAL.** Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.  
**FIRE, MIXED.** Knoxville, Tenn., from Virginia and Carolina territories, and points north of Potomac River, 657.  
**FIRE, ISLE.** Peoria, Ill., from Laredo and Eagle Pass, Tex., 137.  
**FLOURBAP.** Wagon Wheel Gap, Colo., to East St. Louis, Ill., 493.  
**FOREST PRODUCTS.** Oregon to various destinations, 213.  
**FRUITS.** Detroit switching district. Reconsignment, 233.  
**FRUITS, CANNED.** Colorado to Oklahoma, 433.  
**FRUITS, FRESH.** California to Phoenix, Ariz., 363.  
**GASOLINE:**  
 Gainesville, Tex., to Kassel, Avondale, and Westwego, La., for export, 14.  
 Louisiana to various destinations, 733.  
**GLASSES, JELLY.** Sapulpa, Okla., and Hillsboro, Ill., to Pacific coast terminals, and intermediate points, 293.

**GRAIN:**

Chicago district. Transit privileges, 446.

Idaho, Oregon, and Washington to Portland, Astoria, and other Oregon points, and Vancouver, Wash., 683.

Kansas. Increase in rates, 440 (447).

Pittsburgh, Pa. Reconsignment, 506.

**GRAIN PRODUCTS:**

Chicago district. Transit privileges, 466.

Idaho, Oregon, and Washington to Portland, Astoria, and other Oregon points, and Vancouver, Wash., 683.

Kansas. Increase in rates, 440 (445).

**GRAVEL:**

Benton, Ark., to Shreveport, La., 123.

Kansas. Increase in rates, 440 (442).

Lafayette, Ind., to Illinois, 729.

**GROCERIES.** Southern classification, official classification, and southwestern territories. Peddler car service, 875.

**GYPNUM PRODUCTS.** Grand Rapids, Mich., to Wisconsin, Michigan, and Minnesota, 237.

**HARNES, WIRING.** Toledo, Ohio, to Oakland, Calif., 693.

**HAY.** Kansas. Increase in rates, 440 (445).

**HOGS:**

Birmingham, Ala., from New Orleans and Port Chalmette, La., 627.

North Fort Worth, Tex., from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., 166.

Oklahoma City, Okla., from Sioux Falls, S. Dak., and Kansas City, Mo.-Kans., 171.

**HOMINY, CANNED.** Colorado to Oklahoma, 433.

**ICE:**

Fleischmann's. N. Y., to Grand Gorge and Hobart, N. Y., 506.

Oklahoma City, Okla., from Carthage and Joplin, Mo., 677.

St. Louis, Mo., to Chicago, Ill., 618.

Western trunk line territory, 618.

**INHOUS, STEER.** Seattle Wash., from San Francisco and South San Francisco, Calif., 207.

**IRON.** Chicago, Ill., to Pacific coast ports, for export, 127.

**IRON, BAR.** Galveston, Tex., from Beaver Falls, Pa., Cumberland, Md., and Atlantic seaboard territory, via New York, N. Y., 256.

**IRON, PIG:**

Alabama and Tennessee to Ohio River crossings and central freight association territory, 646.

Memphis, Tenn., to Belleville, Ill., 107.

Utah common points from Alabama and Tennessee, 7.

Wharton, N. J., to Seattle, Wash., for export, 144.

**IRON, SCRAP:**

Ann Arbor, Mich., to Kalamazoo, Mich., 129.

Omaha, Nebr. Demurrage, 493.

**JAM, CANNED.** Colorado to Oklahoma, 453.

**JARS, GLASS FRUIT.** Sapulpa, Okla., and Hillsboro, Ill., to Pacific coast terminals, and intermediate points, 296.

**KAINIT.** Norfolk, Va., to Charleston, S. C., 131.

**KILN, LIME.** Waverly, Wash., to Gunnison, Utah, 483.

**LARD SUBSTITUTES.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

**LIMESTONE.** Alton, Ill. Switching, 287.

**LINTERS, COTTON.** Texas, 591.

**LIVE STOCK.** Kansas. Increase in rates, 440 (446).

**LOSS:**

Indiana. Increase in rates, 648.

Ohio River, points south of, to Cairo, Ill., 701.

**LOSS, GUM AND POPLAR.** South Carolina to North Carolina, 669.

**LUMBER:**

Kansas. Increase in rates, 440 (447).

Mobile, Ala., to Chattanooga, Tenn., 47.

Oregon to various destinations, 218.

Sherman, Ky., to interstate destinations, 345.

South Carolina, North Carolina, and Virginia to Carney's Point and

Penns Grove, N. J., 151.

Williamsport, Pa. Switching, 99.

**LUMBER, CYPRESS.** Lake Charles, La., to Texas, 714.

**LUMBER PRODUCTS.** Louisiana to Nebraska and Kansas, 417.

**LUMBER, YELLOW PINE.** Louisiana to Nebraska and Kansas, 417.

**MACHINERY.** Chicago, Ill., to Pacific coast ports for export, 127.

**MACHINERY, SUGAR MAKING (SECONDHAND).** Waverly, Wash., to Gunnison, Utah, 483.

**MEAL, COFRA, COTTONSEED, PALM-KERNEL, PEANUT OIL-CAKE, SOYA-BEAN, VELVET-BEAN.** Knoxville, Tenn., from southern points, 657.

**MEATS, CANNED AND FRESH.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

**MERCHANDISE.** Chicago, Ill., to Pacific coast ports, for export, 127.

**MILK:**

Chicago, Ill., from Colgate, Duplainville Waukesha, and Mukwonago, Wis. Minimum charge, 427.

Kansas. Increase in rates, 440.

**MILK, CONDENSED (CANNED).** Colorado to Oklahoma, 433.

**MILLWORK.** Dubuque, Clinton, and Muscatine, Iowa, to Texas common point territory and El Paso, Tex., 721.

**MONARS.** Boston, Mass., from New Mexico, Texas, Arizona, Nevada, and California, 223.

**MOLASSES, BLACKSTRAP:**

Knoxville, Tenn., from New Orleans, La., Mobile, Ala., and Savannah, Ga., 405.

Memphis, Tenn., from Mobile, Ala., and New Orleans, La., 96.

Minneapolis, Minn., from New Orleans, La., Mobile, Ala., and Memphis, Tenn., 469.

**OIL CORN COOKING.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

**OIL, COTTONSEED COOKING.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

**OIL, CRUDE:**

Kansas. Increase in rates, 440.

Rockford, Ill., from Kansas and Oklahoma, 18.

**OIL, FUEL:**

Casper, Wyo., to Whiting, Ind., 135.

Kansas. Increase in rates, 440.

Rockford, Ill., from Kansas and Oklahoma, 18.

**OIL, GAS:**

Kansas. Increase in rates, 440.

Rockford, Ill., from Kansas and Oklahoma, 18.

**OIL, LUBRICATING.** Port Arthur, Tex., to Galveston, Tex., for export, 489.

**OIL, PEANUT.** Suffolk, Va., to Macon, Ga., 713.

**OIL, PEANUT COOKING.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

**OIL, PETROLEUM.** Kansas. Increase in rates, 440.

**OIL, PINE.** Pensacola, Fla., to Miami, Ariz., 35.

**OIL, REFINED PETROLEUM.** Rockford, Ill., from Kansas and Oklahoma, 18.

**OIL, ROAD.** Kansas. Increase in rates, 440.

**OIL, SOYA-BEAN COOKING.** Official classification, southern classification and southwestern territories. Peddler car service, 375.

**ORE, IRON.** Granite City, Ill., from Wisconsin and Michigan, 194.

**OYSTER COCKTAILS, CANNED.** See COCKTAILS, CANNED OYSTER.

**PACKING-HOUSE PRODUCTS.** Official classification, southern classification and southwestern territories. Peddler car service, 375.

**PETROLEUM:**

Kansas. Increase in rates, 440(450).

Rockford, Ill., from Kansas and Oklahoma, 18.

**PETROLEUM, CRUDE:**

Drace, Okla., to Sapulpa, Okla., 493.

Junction City, Okla., to Lawton, Okla., 480.

Oklahoma City, Okla., from Burkburnett and Ranger district, Tex., Shreveport district, La., 93.

**PETROLEUM PRODUCTS:**

Joplin, Mo., to Missouri, 313.

Kansas. Increase in rates, 440(450).

Rockford, Ill., from Kansas and Oklahoma, 18.

**PICKLES, CANNED.** Colorado to Oklahoma, 433.

**PIPE.** Waverly, Wash., to Gunnison, Utah, 483.

**PLASTER.** Grand Rapids, Mich., to Wisconsin, Michigan, and Minnesota, 287.

**PLASTER, CEMENT:**

Acme, N. Mex., and Acme, Tex., to Illinois, Indiana, Ohio, Alabama, and Florida, 119.

Southard, Cement, Ideal, and Okeene, Okla., to New York and Brooklyn, N. Y. (Gulf Line piers only), 685.

**POLES.** Ohio River, points south of, to Cairo, Ill., 701.

**PORK AND BEANS, CANNED.** Colorado to Oklahoma, 433.

**POWDERS, SOAP.** Southern territory. Rating, 307.

**PRESERVES, CANNED.** Colorado to Oklahoma, 433.

**PULP, WOOD.** Lockport, N. Y., to Thomson, N. Y., 59.

**PUMPS.** Waverly, Wash., to Gunnison, Utah, 483.

**REFUSE.** Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.

**REFUSE, SAWMILL.** Wausau, Wis., to Brokaw and Rothschild, Wis., 56.

**SALT.** Kansas. Increase in rates, 440(447).

**SAND:**

Kansas. Increase in rates, 440(444).

Lafayette, Ind., to Illinois, 729.

Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.

Umatilla, Oreg., to Helix, Oreg., 491.

**SAND GLASS.** Gulon, Ark., to Augusta, Kana., 12.

**SAND, MOLDING.** Ottawa, Ill., to Chattanooga, Tenn., 105.

- SASH.** Dubuque, Clinton, and Muscatine, Iowa, to Texas common point territory and El Paso, Tex., 721.
- SAUER KRAUT, CANNED.** Colorado to Oklahoma, 483.
- SCREENS, DOOR AND WINDOW.** Dubuque, Clinton, and Muscatine, Iowa, to Texas common-point territory and El Paso, Tex., 721.
- SHAFTING.** Galveston, Tex., from Beaver Falls, Pa., Cumberland, Md., and Atlantic seaboard territory, via New York, N. Y., 253.
- SHAVINGS.** Wausau, Wis., to Brokaw and Rothschild, Wis., 56.
- SHELLS, CLAM AND MUSSEL.** Cloverport and other Kentucky points to Indiana, Illinois, Iowa, Missouri, Nebraska, and Wisconsin, 366.
- SHINGLES.** Utah, Wyoming, Washington, Montana, and Idaho to and from Utah, Wyoming, Washington, Montana, and Idaho, 293.
- SHINGLES, CYPRESS.** Lake Charles, La., to Texas, 714.
- SILK, ARTIFICIAL.** Refusal of carriers to accept unless declared value is marked on the package, 32.
- SIRUP.** Kansas. Increase in rates, 440 (445).
- SIRUP, SORGHUM.** St. Louis, Mo., from Corinth, Calhoun City, and Lexington, Miss., 62.
- SLAG.** Midvale (Philadelphia), Pa., to Gloucester, N. J., 291.
- SMOKESTACKS.** Waverly, Wash., to Gunnison, Utah, 483.
- SOAP, LAUNDRY.** Southern territory. Rating, 307.
- SODA, NITRATE OF.** Norfolk, Va., to Carneys Point, N. J., 109.
- SODA, SILICATE OF.** Ancor, Ohio, to Red Bank, Ohio, 471.
- SOUPS, CANNED:**  
     Colorado to Oklahoma, 433.  
     Official classification, southern classification, and southwestern territories.  
     Peddler car service, 375.
- SPAGHETTI-MEAT CHILI.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.
- STARCH, POTATO.** Seattle and Tacoma, Wash., and San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Pennsylvania and Massachusetts, imported from Japan, 422.
- STARTING DEVICES.** Toledo, Ohio, to Oakland, Calif., 693.
- STAVES, SLACK BARREL.** Crowder, Miss., to western trunk line, central and eastern trunk line territories, and New Orleans, La., 147.
- STEEL.** Chicago, Ill., to Pacific coast ports, for export, 127.
- STEEL, SCRAP:**  
     Ann Arbor, Mich., to Kalamazoo, Mich., 129.  
     Omaha, Nebr. Demurrage, 486.
- STEEL, STRUCTURAL.** Waverly, Wash., to Gunnison, Utah, 483.
- STONE, CRUSHED.** Kansas. Increase in rates, 440.
- STRAW, Baled.** Oldenburg, Ill., to Rockport, Ind., 60.
- SUGAR:**  
     California to Phoenix, Ariz., 412.  
     Colorado territory to Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma, 510.  
     Kansas. Increase in rates, 440 (445).  
     San Francisco, Calif., to Maricopa, Ariz., and points east thereof, including El Paso, Tex., via Phoenix, Ariz. Through routes and joint rates, 412.
- TAILINGS, PETROLEUM WAX.** Kansas. Increase in rates, 440.
- TAMALE, CHICKEN.** Official classification, southern classification, and southwestern territories. Peddler car service, 375.

TANKS. Waverly, Wash., to Gunnison, Utah, 483.

TANKS, PLATE-IRON (SECONDHAND). Watkins, Okla., to Port Arthur, Tex., 141.

TOMATOES. Vincennes, Ind., from Jackson and St. Francisville, Ill., 28.

VEGETABLES, CANNED. Colorado to Oklahoma, 433.

VEGETABLES, FRESH:

California to Phoenix, Ariz., 368.

Detroit switching district. Reconsignment, 283.

WATER. Howesville, Ind., to Indiana mines, 101.

WAX, PARAFFIN. Port Arthur, Tex., to Galveston, Tex., for export, 489.

WHEAT. Tucumcari, N. Mex., to Galveston, Tex., 852.

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WOOD, PULP. Kingsport, Tenn., from South Carolina and Georgia, 277.

WOOL. Boston, Mass., from New Mexico, Texas, Arizona, Nevada, and California, 228.

YARN, TEXTILE. Released rates, 32.

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## TABLE OF LOCALITIES.

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[The numbers in parentheses after citation indicates where locality is considered.]

- Aberdeen, S. Dak., from Illinois mines. Bituminous coal, 741.
- Acme, N. Mex., to Illinois, Indiana, Ohio, Alabama, and Florida. Cement plaster, 119.
- Acme, Tex., to Illinois, Indiana, Ohio, Alabama, and Florida. Cement plaster, 119.
- Alabama. Passengers in sleeping and parlor cars, 153.
- Alabama from Acme, N. Mex., and Acme, Tex. Cement plaster, 119.
- Alabama to and from North Carolina. Class and commodity rates, 64.
- Alabama to Ohio River crossings and central freight association territory. Pig iron, 646.
- Alabama to Utah common points. Pig iron, 7.
- Albany, N. Y., to and from North Carolina. Class and commodity rates, 64 (89).
- Albemarle, N. C., from Knoxville, Tenn. Mixed feed, 657.
- Albert Lea, Minn., from Illinois mines. Bituminous coal, 741.
- Alexandria, Va., to and from Washington, D. C. Commutation fares, 200.
- Alkali, Ohio, to and from various points. Divisions, 161.
- Allen, Nebr., from Spicer, Minn. Ice, 618.
- Alton, Ill. Switching of limestone, 287.
- Ancor, Ohio, to Red Bank, Ohio. Silicate of soda, 471.
- Ann Arbor, Mich., to Kalamazoo, Mich. Scrap iron and steel, 129.
- Antigo, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.
- Antruville, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Appleton, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.
- Arizona to Boston, Mass. Wool and mohair, 228.
- Arizona from San Francisco and other points in California. Through routes and joint rates; fresh fruits and vegetables, 368.
- Arkansas from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.
- Arkansas from Kentucky mines. Coal, 686.
- Arkansas to and from Mississippi River crossings. Class rates, 464.
- Arkansas to and from Texas. Class rates, 596.
- Arnolds Park, Iowa, to Ashland, Nebr. Ice, 618.
- Ash Grove, Mo., from Joplin, Mo. Petroleum products, 818.
- Ashland, Nebr., from Watertown, S. Dak., and Arnolds Park, Iowa. Ice, 618.
- Ashland, Wis., from Grand Rapids, Wis. Plaster and gypsum products, 287.
- Assumption, Ill., from Lafayette, Ind. Sand and gravel, 729 (782).
- Astoria, Oreg., to and from Idaho, Oregon, and Washington. Grain and products, 683.
- Atkins, N. Y., from Seaboard, N. J. Coke, 317 (380).
- Atlanta, Ga., to Knoxville, Tenn. Cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.
- Atlantic seaboard territory to Galveston, Tex., via New York, N. Y. Cold-rolled or drawn steel bars, bar iron, and shafting, 253.
- Auburn, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.



- Augusta, Kans., from Guion, Ark. Glass sand, 12.  
 Aurora, Mo., from Joplin, Mo. Petroleum products, 313.  
 Avondale, La., from Gainesville, Tex., for export. Gasoline, 14.  
 Bacchus, Utah, to McGill, Nev. Niter cake, 22.  
 Ballston, Va., to and from Washington, D. C. Commutation fares, 200.  
 Baltimore, Md. Demurrage on coke for export, 583.  
 Baltimore, Md., from Knoxville, Tenn. Mixed feed, 657.  
 Baltimore, Md., from Louisiana. Gasoline, 733.  
 Baltimore, Md., to and from North Carolina. Class and commodity rates, 64 (89).  
 Baraboo, Wis., to Granite City, Ill. Iron ore, 194.  
 Barbourville, Ky., from Sellersburg, Ind. Cement, 362.  
 Bastrop, La., to various points. Gasoline, 733.  
 Baton Rouge, La., from Louisiana. Gasoline, 733.  
 Baton Rouge, La., to and from Texas common-point territory. Class rates, 596.  
 Bayonne, N. J. Absorption of switching charges, 226.  
 Bayway, N. J., to Gibbstown and Carney's Point, N. J. Sulphuric and muriatic acid, 631.  
 Beaumont, Tex., from Dubuque, Clinton, and Muscatine, Iowa. Sash, doors, door and window screens, and other millwork, 721 (725).  
 Beaumont, Tex., from Kansas City, Mo. Iron or steel bolts, 9.  
 Beaver Creek, Oreg., to various destinations. Lumber and forest products, 218.  
 Beaver Falls, Pa., to Galveston, Tex., via New York, N. Y. Cold-rolled or drawn steel bars, bar iron, and shafting, 253.  
 Beech Island, S. C., to Kingsport, Tenn. Pulp wood, 277.  
 Beekman, La., to various points. Gasoline, 733.  
 Belleville, Ill., from Memphis, Tenn. Pig iron, 107.  
 Belleville district, Ill., to various destinations. Bituminous coal, 741.  
 Bellevue, Alberta, Canada, to Naches, Eureka, and Mabton, Wash. Coal, 491.  
 Benton, Ark., to Shreveport, La. Gravel, 123.  
 Benton Harbor, Mich., from Gillespie, Ill. Coal, 335.  
 Bessemer, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Birmingham, Ala., to Knoxville, Tenn. Cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.  
 Birmingham, Ala., from New Orleans and Port Chalmette, La. Cattle and hogs, 627.  
 Birmingham, Ala., to Salt Lake City and other Utah common points. Pig iron, 7.  
 Booth, S. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Boring, Oreg., to various destinations. Lumber and forest products, 218.  
 Boston, Mass., from Knoxville, Tenn. Mixed feed, 657.  
 Boston, Mass., from Marianna and Forrest City, Ark., concentrated and compressed at Helena, Ark. Cotton, 303.  
 Boston, Mass., from New Mexico, Texas, Arizona, Nevada, and California. Wool and mohair, 228.  
 Boston, Mass., to and from North Carolina. Class and commodity rates, 64 (89).  
 Bridgeport, Conn., from Seaboard, N. J., via New York Harbor. Coke; through routes and joint rates, 317 (328).  
 Brighton, Colo., to Oklahoma. Canned goods, 433 (434).  
 Bristol, Va., from Knoxville, Tenn. Mixed feed, 657.  
 Brokaw, Wis., from Wausau, Wis. Shavings and sawmill refuse, 56.  
 Bronson, Iowa, from Spicer, Minn. Ice, 618.  
 Brooklyn, N. Y., from Seaboard, N. J. Coke, 317 (329).  
 Brooklyn, N. Y., from Southard, Cement, Ideal, and Okeane, Okla. Cement plaster, 685.

- Brooklyn (Bushwick Station), N. Y., from Fairfield, Me. Wood-pulp board, 43.  
 Brooklyn East District Terminal, N. Y., from Seaboard, N. J. Coke, 317 (329).  
 Buck Mountain colliery, Pa., to Jersey City, N. J. Anthracite coal, 211.  
 Buckner Spur, Oreg., to various destinations. Lumber and forest products, 218.  
 Buffalo, N. Y., to and from North Carolina. Class and commodity rates, 64 (89).  
 Buffalo, N. Y., from Pennsylvania and West Virginia mines. Bituminous coal, 759 (762).  
 Bull Run, Oreg., to various destinations. Lumber and forest products, 218.  
 Burkburnett district, Tex., to Oklahoma City, Okla. Crude petroleum, 83.  
 Burlington, Iowa, from Illinois mines. Bituminous coal, 741.  
 Burnham, Ill., from Cardigan Junction and Stillwater, Minn., and Chippewa Falls, Wis. Ice, 618.  
 Bushwick Station, Brooklyn, N. Y., from Fairfield, Me. Wood-pulp board, 43.  
 Butler, Mo., from Joplin, Mo. Petroleum products, 313.  
 Cadwell, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Cairo, Ill., from Louisiana. Gasoline, 733.  
 Cairo, Ill., from points south of Ohio River. Logs, bolts, billets, and poles, 701.  
 Calhoun City, Miss., to St. Louis, Mo. Sorghum sirup, 62.  
 California to Boston, Mass. Wool and mohair, 228.  
 California to Maricopa and other points in Arizona, via Phoenix, Ariz. Through routes and joint rates; fresh fruits and vegetables, 368.  
 California to Maricopa and points east thereof, including El Paso, Tex., via Phoenix, Ariz. Through routes and joint rates; sugar, 412.  
 California to Phoenix, Ariz. Fresh fruits and vegetables, 368.  
 California to Phoenix, Ariz. Sugar, 412.  
 Cambridge, Nebr., from Louisiana. Yellow-pine lumber and lumber products, 417.  
 Canada to Washington. Coal, 491.  
 Caney, Kans., from Deering, Kans. Slack coal, 113.  
 Canon City, Colo., to Oklahoma. Canned goods, 433 (434).  
 Canton, Ohio, from Pittsburgh and Connellsville districts, Pa. Coal, 726.  
 Cardigan Junction, Minn., to Chicago and Burnham, Ill., and South Omaha and Memphis, Nebr. Ice, 618.  
 Carlinville, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Carney's Point, N. J., from Jersey City, Newark, and Bayway, N. J. Sulphuric and muriatic acid, 631.  
 Carney's Point, N. J., from Norfolk, Va. Nitrate of soda, 109.  
 Carney's Point, N. J., from South Carolina, North Carolina, and Virginia. Lumber, 151.  
 Carolina territory from Knoxville, Tenn. Mixed feed, 657.  
 Cartersville, Mo., from Joplin, Mo. Petroleum products, 313.  
 Carthage, Mo., from Joplin, Mo. Petroleum products, 313.  
 Carthage, Mo., to Oklahoma City, Okla. Ice, 677.  
 Carthage, Mo., to Westville, Okla. Empty barrels, 45.  
 Casper, Wyo., to Whiting, Ind. Fuel oil, 135.  
 Casselman, Pa. Car furnishing; coal, 429.  
 Cazadero, Oreg., to various destinations. Lumber and forest products, 218.  
 Cedar Rapids, Iowa, from Illinois mines. Bituminous coal, 741.  
 Cedar Rapids, Iowa, from Jenkins and McRoberts, Ky. Bituminous coal, 636.  
 Cement, Okla., to New York and Brooklyn, N. Y. (Gulf Line piers only). Cement plaster, 685.  
 Central freight association territory from Alabama and Tennessee. Pig iron, 646.  
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- Central territory from Crowder, Miss. Slack barrel staves, 147.
- Chalmette, La., to Birmingham, Ala. Cattle and hogs, 627.
- Champaign, Ill., from Lafayette, Ind. Sand and gravel, 729 (782).
- Charleston, S. C., from Knoxville, Tenn. Mixed feed, 657.
- Charleston, S. C., from Norfolk, Va. Kainit, 181.
- Charlotte, N. C., from Knoxville, Tenn. Mixed feed, 657.
- Chatham, Ill., from Lafayette, Ind. Sand and gravel, 729 (782).
- Chattanooga, Tenn., from Mobile, Ala. Lumber, 47.
- Chattanooga, Tenn., from Ottawa, Ill. Molding sand, 105.
- Cheraw, S. C., from Knoxville, Tenn. Mixed feed, 657.
- Chicago, Ill., from Colgate, Duplainville, Waukesha, and Mukwonago, Wis. Minimum charge on milk and cream, 427.
- Chicago, Ill., from Douglas, W. Va., reconsigned to Oakdale, Calif., and subsequently to Los Angeles, Calif. Smithing coal, 497.
- Chicago, Ill., from Hopkins, Waconia, and Cardigan Junction, Minn., and St. Louis, Mo. Ice, 618.
- Chicago, Ill., from Illinois mines. Bituminous coal, 741.
- Chicago, Ill., from Louisiana. Gasoline, 733.
- Chicago, Ill., to Pacific coast ports for export. Machinery, merchandise, iron, and steel, 127.
- Chicago, Ill., from Seattle and Tacoma, Wash., and San Francisco, Calif., imported from Japan. Potato starch, 422.
- Chicago district. Transit privileges on grain and products, 466.
- Chippewa Falls, Wis., to Burnham, Ill., and Silver Lake, Wis. Ice, 618.
- Chippewa Falls, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.
- Cincinnati, Ohio, from Louisiana. Gasoline, 733.
- Clarendon, Va., to and from Washington, D. C. Commutation fares, 200.
- Clayton, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Cleghorn, Iowa, from Spicer, Minn. Ice, 618.
- Cleveland, N. C., from South Carolina. Poplar and gum logs, 669.
- Cleveland, Ohio, from Louisiana. Gasoline, 733.
- Clinton, Iowa, from Illinois mines. Bituminous coal, 741.
- Clinton, Iowa, to Texas common point territory and El Paso, Tex. Sash, doors, door and window screens, and other millwork, 721.
- Clinton, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Clintonville, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.
- Cloverport, Ky., to Indiana, Illinois, Iowa, Missouri, Nebraska, and Wisconsin. Clam and mussel shells, 366.
- Coketon, W. Va., to Lamar, Colo. Prepared smithing coal, 648.
- Coleridge, Iowa, from Currie, Minn. Ice, 618.
- Colgate, Wis., to Chicago, Ill. Minimum charge on milk and cream, 427.
- College Grove, Tenn., from Sellersburg, Ind. Cement, 362.
- Colorado to Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma. Minimum weight on sugar, 510.
- Colorado from Idaho, Kansas, Nebraska, Utah, and Colorado. Minimum weight on sugar, 510.
- Colorado to Oklahoma. Canned goods, 493.
- Colorado territory to Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma. Minimum weight on sugar, 510.
- Columbia River basin to and from Portland, Oreg., and Vancouver, Wash. Class and commodity rates, 683.

- Columbus, Ohio, from Louisiana. Gasoline, 733.  
 Connecticut from Seaboard, N. J. Coke, 317.  
 Connellsville district, Pa., to Canton, Ohio. Coal, 726.  
 Corinth, Miss., to St. Louis, Mo. Sorghum sirup, 62.  
 Crosley, La., to various points. Gasoline, 733.  
 Crowder, Miss., to western trunk line, central, and eastern trunk line territories, and New Orleans, La. Slack-barrel staves, 147.  
 Crowley, Colo., to Oklahoma. Canned goods, 433 (434).  
 Cumberland, Md., to Galveston, Tex., via New York, N. Y. Cold-rolled or drawn steel bars, bar iron, and shafting, 253.  
 Currie, Minn., to Sioux City and Le Mars, Iowa, and Coleridge, Nebr. Ice, 618.  
 Dakota City, Nebr., from Spicer, Minn. Ice, 618.  
 Danville, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Danville, Va., from Knoxville, Tenn. Mixed feed, 657.  
 Darlington. S. C., from Knoxville, Tenn. Mixed feed, 657.  
 Davenport, Iowa, from Illinois mines. Bituminous coal, 741.  
 Davenport, Iowa, to Minnesota Transfer, Minn. Steel horse collars, 629.  
 Decatur, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Deep Creek, Oreg., to various destinations. Lumber and forest products, 218.  
 Deepwater, Mo., from Dickey Clay Spur, Mo. Clay, 223.  
 Deering, Kans., to Caney, Kans. Slack coal, 113.  
 Delaware to and from North Carolina. Class and commodity rates, 64.  
 Denver, Colo., to Galena, Tex. Sulphuric acid, 139.  
 Denver, Colo., to Oklahoma. Canned goods, 433 (434).  
 Des Moines, Iowa, from Illinois mines. Bituminous coal, 741.  
 Detroit, Mich., to Melrose, Calif. Automobile floor, toe, and running boards, 175.  
 Detroit, Mich., to San Francisco, Calif., for export to Philippine Islands and Java. Motor cars, 689.  
 Detroit switching district. Reconsignment; fresh or green fruits and vegetables, 283.  
 Dewar, Okla., to Seattle, Wash., and San Francisco, Calif., for export. Carbon black, 133.  
 Dickey Clay Spur, Mo., to Deepwater, Mo. Clay, 223.  
 Douglas, W. Va., to Chicago, Ill., reconsigned to Oakdale, Calif., and subsequently to Los Angeles, Calif. Smithing coal, 497.  
 Downingtown, Pa. Switching, 705.  
 Drace, Okla., to Sapulpa, Okla. Crude petroleum, 493.  
 Dublin, Ga., from Henderson, N. C. Cotton seed, 288.  
 Dubuque, Iowa, from Illinois mines. Bituminous coal, 741.  
 Dubuque, Iowa, to Texas common point territory and El Paso, Tex. Sash, doors, door and window screens, and other millwork, 721.  
 Duluth, Minn., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Dunn, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Duplainville, Wis., to Chicago, Ill. Minimum charge on milk and cream, 427.  
 Eagle Creek, Oreg., to various destinations. Lumber and forest products, 218.  
 Eagle Pass, Tex., to Peoria, Ill. Istle fiber, 137.  
 East Branch, N. Y., from Seaboard, N. J. Coke, 317 (327).  
 Eastern trunk line territory from Crowder, Miss. Slack-barrel staves, 147.  
 East St. Louis, Ill., from Louisiana. Gasoline, 733.  
 East St. Louis, Ill., from Wagon Wheel Gap, Colo. Fluorspar, 498.  
 Eau Claire, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Effingham, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).

- Elberton, Ga., from Raleigh, N. C. Class and commodity rates, 64 (71).  
 Eldorado, Ill. Trackage agreements. Coal, 265.  
 Elk Point, S. Dak., from Spicer, Minn. Ice, 618.  
 Elkton, Ky., from Sellersburg, Ind. Cement, 862.  
 Elmira, N. Y., to and from North Carolina. Class and commodity rates, 64 (89).  
 El Paso, Tex., from Dubuque, Clinton, and Muscatine, Iowa. Sash, doors, door and window screens, and other millwork, 721.  
 El Paso, Tex., from San Francisco, Calif., via Phoenix, Ariz. Through routes and joint rates; sugar, 412.  
 Elroy, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Emerson, Nebr., from Stillwater, Minn. Ice, 618.  
 Eminence, Ky., from Sellersburg, Ind. Cement, 862.  
 England from Galveston, Tex., originating at Port Arthur, Tex. Lubricating oil and paraffin wax, 489.  
 Escanaba, Mich., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Estacada, Oreg., to various destinations. Lumber and forest products, 218.  
 Eureka, Wash., from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada. Coal, 491.  
 Eustis, Nebr., from Louisiana. Yellow-pine lumber and lumber products, 417.  
 Ewing, Ky., from Sellersburg, Ind. Cement, 862.  
 Fairbanks, La., to various points. Gasoline, 733.  
 Fairchild, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Fairfax, S. C., from Sanford, N. C. Class and commodity rates, 64 (71).  
 Fairfax, Va., to and from Washington, D. C. Commutation fares, 200.  
 Fairfield, Me., to Bushwick Station, Brooklyn, N. Y. Wood-pulp board, 43.  
 Fairmont, W. Va. Car distribution. Coal, 269.  
 Faisons, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Falls Church, Va., to and from Washington, D. C. Commutation fares, 200.  
 Farmingdale, N. Y., from Seaboard, N. J. Coke, 817 (330).  
 Fayette, Miss., to Natchez, Miss., compressed and reshipped to New Orleans, La. Cotton, 110.  
 Fayetteville, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Fleischmann's, N. Y., to Grand Gorge and Hobart, N. Y. Ice, 503.  
 Florence, S. C., from Knoxville, Tenn. Mixed feed, 657.  
 Florence, Wis., to Granite City, Ill. Iron ore, 194.  
 Florida from Acme, N. Mex., and Acme, Tex. Cement plaster, 119.  
 Florida to and from North Carolina. Class and commodity rates, 64.  
 Fond du Lac, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.  
 Fond du Lac, Wis., from Illinois mines. Bituminous coal, 741.  
 Fordwick, Va. Switching and spotting, 231.  
 Fordyce, Nebr., from Spicer, Minn. Ice, 618.  
 Forrest City, Ark., to New Orleans, La., and Boston, Mass., concentrated and compressed at Helena, Ark. Cotton, 808.  
 Forrest, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Fort Dodge, Iowa, from Illinois mines. Bituminous coal, 741.  
 Four Oaks, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Fulton-Peoria district, Ill., to various destinations. Bituminous coal, 741.  
 Gainesville, Tex., to Kassel, Avondale, and Westwego, La., for export. Gasoline, 14.  
 Galena, Tex., from Denver, Colo. Sulphuric acid, 189.  
 Galveston, Tex., from Beaver Falls, Pa., Cumberland, Md., and Atlantic seaboard territory. Cold-rolled or drawn steel bars, bar iron, and shafting, 253.  
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- Galveston, Tex., from Dubuque, Clinton, and Muscatine, Iowa. Sash, doors, door and window screens, and other millwork. 721 (725).
- Galveston, Tex., from Kansas City, Mo. Iron or steel bolts, 9.
- Galveston, Tex., from Port Arthur, Tex., for export. Lubricating oil and paraffin wax, 489.
- Galveston, Tex., from Tucumcari, N. Mex. Wheat, 352.
- Garfield Smelter, Utah, to McGill, Nev. Niter cake, 22.
- Gary, Ind. Coke; intraplant movement, 349.
- Gary, Ind., from Gillespie, Ill. Coal, 335.
- Geddie, La., to various points. Gasoline, 733.
- Georgia to Kingsport, Tenn. Pulp wood, 277.
- Georgia to and from North Carolina. Class and commodity rates, 64.
- Gibbstown, N. J., from Jersey City, Newark, and Bayway, N. J. Sulphuric acid and muriatic acid, 631.
- Gibson City, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Gillespie, Ill., to Missouri, Kansas, Nebraska, Iowa, South Dakota, North Dakota, Minnesota, Michigan, Indiana, and Wisconsin. Coal, 335.
- Gloucester, N. J., from Midvale, Pa. Refuse, bricks, dirt, excavated material, flue dust, sand, and slag, 291.
- Grand Gorge, N. Y., from Fleischmann's, N. Y. Ice, 495.
- Grand Rapids, Mich., to Wisconsin, Michigan, and Minnesota. Plaster and gypsum products, 237.
- Grand Rapids, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Granite City, Ill., from Wisconsin and Michigan. Iron ore, 194.
- Granite Falls, Minn., from Illinois mines. Bituminous coal, 741.
- Grayling, Mich., from Midland, Ind. Bituminous coal, 39.
- Greeley, Colo., to Oklahoma. Canned goods, 433 (434).
- Green Bay, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Greenville, Ky., from Sellersburg, Ind. Cement, 362.
- Gulon, Ark., to Augusta, Kans. Glass sand, 12.
- Gulf Line piers, N. Y., from Southard, Cement, Ideal, and Okeene, Okla. Cement plaster, 635.
- Gunnison, Utah, from Waverly, Wash. Secondhand sugar-making machinery, 483.
- Guthrie, La., to various points. Gasoline, 733.
- Harlan, Ky., from Sellersburg, Ind. Cement, 362.
- Harlem River, N. Y., to Providence, R. I., and Worcester, Mass. Bananas, 179.
- Harrisburg, Pa., to and from North Carolina. Class and commodity rates, 64 (89).
- Harrodsburg, Ky., from Sellersburg, Ind. Cement, 362.
- Hazard, Ky., from Sellersburg, Ind. Cement, 362.
- Helena, Ark., from Marianna and Forrest City, Ark., concentrated, compressed, and reshipped to New Orleans, La., and Boston, Mass. Cotton, 303.
- Helix, Oreg., from Umatilla, Oreg. Sand, 491.
- Henderson, N. C., to Dublin, Ga. Cotton seed, 283.
- Hercules, Calif., to McGill, Nev. Niter cake, 22.
- Hermanville, Miss., to Natchez, Miss., compressed and reshipped to New Orleans, La. Cotton, 110.
- Herrin, Ill. Trackage agreements; coal, 259.
- Higganum, Conn., from Seaboard, N. J., via New York Harbor. Coke; through routes and joint rates, 317 (323).

- La Crosse, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.  
 La Crosse, Wis., from Illinois mines. Bituminous coal, 741.  
 Ladysmith, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.  
 Lafayette, Ind., to Illinois. Sand and gravel, 729.  
 Lake Charles, La., to Texas. Cypress lumber and shingles, 714.  
 Lake Crystal, Minn., to Sioux City, Iowa. Ice, 618.  
 Lamar, Colo., from Coketon, W. Va. Prepared smithing coal, 648.  
 Lamar, Mo., from Joplin, Mo. Petroleum products, 818.  
 Lamkin, La., to various points. Gasoline, 733.  
 Laredo, Tex., to Peoria, Ill. Istle fiber, 137.  
 Lawton, Okla., from Junction City, Okla. Crude petroleum, 480.  
 Leavenworth, Kans. Switching, 697.  
 Lebanon, Ky., from Sellersburg, Ind. Cement, 362.  
 Lehigh region, Pa., to Jersey City, N. J. Anthracite coal, 211.  
 Le Mars, Iowa, from Currie, Minn. Ice, 618.  
 Lenoir, N. C., from South Carolina. Poplar and gum logs, 669.  
 Le Roy, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Lewisport, Ky., from Sellersburg, Ind. Cement, 362.  
 Lexington, Miss., to St. Louis, Mo. Sorghum sirup, 62.  
 Lexington, N. C., from Knoxville, Tenn. Mixed feed, 657.  
 Linden, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.  
 Linwood, N. C., from South Carolina. Poplar and gum logs, 669.  
 Litchfield, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Lockport, N. Y., to Thomson, N. Y. Wood pulp, 59.  
 Longmont, Colo., to Oklahoma. Canned goods, 433 (434).  
 Los Angeles, Calif., from Douglas, W. Va., reconsigned at Chicago, Ill., and subsequently at Oakdale, Calif. Smithing coal, 497.  
 Louisiana from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.  
 Louisiana to and from Mississippi River crossings. Class rates, 464.  
 Louisiana to Nebraska and Kansas. Yellow-pine lumber and lumber products, 417.  
 Louisiana to and from Texas common point territory. Class rates, 596.  
 Louisiana to various points. Gasoline, 733.  
 Loveland, Colo., to Oklahoma. Canned goods, 433 (434).  
 Lowell, Mass., to and from North Carolina. Class and commodity rates, 64 (89).  
 Lupton, Colo., to Oklahoma. Canned goods, 433 (434).  
 McGill, Nev., from Bacchus and Garfield Smelter, Utah, and Hercules, Calif. Niter cake, 22.  
 McRoberts, Ky., to Cedar Rapids, Iowa. Bituminous coal, 636.  
 Mabton, Wash., from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada. Coal, 491.  
 Macon, Ga., to Knoxville, Tenn. Cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.  
 Macon, Ga., from Suffolk, Va. Peanut oil, 713.  
 Madison, Wis., from Illinois mines. Bituminous coal, 741.  
 Magnet, Nebr., from Spicer, Minn. Ice, 618.  
 Maine from seaboard, New Jersey. Coke, 317.  
 Manistique, Mich., from Grand Rapids, Mich. Plaster and gypsum products, 287.  
 Manitowoc, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 287.

- Mankato, Minn., from Illinois mines.** Bituminous coal, 741.  
**Marcus, Iowa, from Spicer, Minn.** Ice, 618.  
**Marianna, Ark., to New Orleans, La., and Boston, Mass., concentrated and compressed at Helena, Ark.** Cotton, 303.  
**Maricopa, Ariz., from California, via Phoenix, Ariz.** Through routes and joint rates; fresh fruits and vegetables, 368.  
**Maricopa, Ariz., from San Francisco, Calif., via Phoenix, Ariz.** Through routes and joint rates; sugar, 412.  
**Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y.** Copra, 116.  
**Marinette, Wis., from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Marion, Ky., from Sellersburg, Ind.** Cement, 362.  
**Marquette, Mich., from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Marshfield, Wis., from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Maryland to and from North Carolina.** Class and commodity rates, 64.  
**Mason City, Iowa, from Illinois mines.** Bituminous coal, 741.  
**Massachusetts from Seaboard, N. J.** Coke, 317.  
**Massachusetts from Seattle and Tacoma, Wash., and San Francisco, Calif., imported from Japan.** Potato starch, 422.  
**Mattoon, Ill., from Lafayette, Ind.** Sand and gravel, 729 (732).  
**Melrose, Calif., from Detroit, Mich.** Automobile floor, toe, and running boards, 175.  
**Memphis, Nebr., from Cardigan Junction and Stillwater, Minn., and North Platte, Nebr.** Ice, 618.  
**Memphis, Tenn., to Belleville, Ill.** Pig iron, 107.  
**Memphis, Tenn., from Louisiana.** Gasoline, 733.  
**Memphis, Tenn., to and from Louisiana and Arkansas.** Class rates, 464.  
**Memphis, Tenn., to Minneapolis, Minn.** Blackstrap molasses, 469.  
**Memphis, Tenn., from Mobile, Ala., and New Orleans, La.** Blackstrap molasses, 96.  
**Memphis, Tenn., to and from Texas common-point territory.** Class rates, 596.  
**Menominee, Mich., from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Mercer-Butler district, Pa., to Perth Amboy, Natco, and Port Murray, N. J.** Coal, 49.  
**Meriden, Iowa, from Spicer, Minn.** Ice, 618.  
**Miami, Ariz., from Pensacola, Fla.** Pine oil, 35.  
**Michigamme, Mich., from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Michigan from Gillespie, Ill.** Coal, 335.  
**Michigan from Grand Rapids, Mich.** Plaster and gypsum products, 237.  
**Michigan to Granite City, Ill.** Iron ore, 194.  
**Michigan from Illinois mines.** Bituminous coal, 741.  
**Midland, Ind., to Grayling, Mich.** Bituminous coal, 39.  
**Midland, Ind., from Howesville, Ind.** Water, 101.  
**Midvale, Pa., to Gloucester, N. J.** Refuse, brick, dirt, excavated material, flue dust, sand, and slag, 291.  
**Midway, Conn., from Seaboard, N. J., via New York Harbor.** Coke; through routes and joint rates, 317 (328).  
**Milwaukee, Wis., from Gillespie, Ill.** Coal, 335.  
**Milwaukee, Wis., from Illinois mines.** Bituminous coal, 741.  
**Minneapolis, Minn., from Illinois mines.** Bituminous coal, 741.  
**Minneapolis, Minn., from New Orleans, La., Mobile, Ala., and Memphis, Tenn.** Blackstrap molasses, 469.  
 62 I. C. C.



- Minneapolis, Minn., to San Diego, Calif. Gasoline motor cars, 675.  
 Minnesota. Increase in rates, 198.  
 Minnesota from Gillespie, Ill. Coal, 335.  
 Minnesota from Grand Rapids, Mich. Plaster and gypsum products, 287.  
 Minnesota to Illinois, Iowa, Nebraska, and South Dakota. Ice, 618.  
 Minnesota from Illinois mines. Bituminous coal, 741.  
 Minnesota Transfer, Minn., from Davenport, Iowa, and Rock Island, Ill. Steel horse collars, 629.  
 Mississippi to Natchez, Miss., concentrated and reshipped to New Orleans, La. Cotton, 110.  
 Mississippi to and from North Carolina. Class and commodity rates, 64.  
 Mississippi River crossings to and from Louisiana and Arkansas. Class rates, 464.  
 Missouri from Cloverport and other points in Kentucky. Clam and mussel shells, 366.  
 Missouri from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.  
 Missouri from Gillespie, Ill. Coal, 335.  
 Missouri from Illinois mines. Bituminous coal, 741.  
 Missouri from Joplin, Mo. Petroleum products, 318.  
 Missouri from Kentucky mines. Coal, 686.  
 Moberly, Mo., from Illinois mines. Bituminous coal, 741 (755).  
 Mobile, Ala., to Chattanooga, Tenn. Lumber, 47.  
 Mobile, Ala., to Knoxville, Tenn. Blackstrap molasses, 405.  
 Mobile, Ala., to Memphis, Tenn. Blackstrap molasses, 96.  
 Mobile, Ala., to Minneapolis, Minn. Blackstrap molasses, 469.  
 Mohrland, Utah, to Naches, -Eureka, and Mabton, Wash. Coal, 491.  
 Monett, Mo., from Joplin, Mo. Petroleum products, 318.  
 Monroe, La. Compression, concentration, and reshipment of cotton, 28.  
 Monroe, La., to Stephenville and other Texas points. Cypress shingles, 714.  
 Monroe district, La., to various destinations. Gasoline, 783.  
 Montana to and from Utah, Wyoming, Washington, Montana, and Idaho. Coal, shingles, and brick, 298.  
 Montgomery, Ala., to Knoxville, Tenn. Cottonseed meal, peanut-oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.  
 Moro, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).  
 Mount Angel, Oreg., to various destinations. Lumber and forest products, 218.  
 Mount Hope Mineral Railroad points. Junction point rates on coal, 157.  
 Mount Vernon, Mo., from Joplin, Mo. Petroleum products, 318.  
 Moville, Iowa, from Spicer, Minn. Ice, 618.  
 Mukwonago, Wis., to Chicago, Ill. Minimum charge on milk and cream, 427.  
 Mulino, Oreg., to various destinations. Lumber and forest products, 218.  
 Mullins, S. C., from Rocky Mount, N. C. Class and commodity rates, 64 (71).  
 Munising, Mich., from Grand Rapids, Mich. Plaster and gypsum products, 287.  
 Munns, N. Y., from Seaboard, N. J. Coke, 317 (327).  
 Muscatine, Iowa, to Texas common point territory and El Paso, Tex. Sash, doors, door and window screens, and other millwork, 721.  
 Naches, Wash., from Mohrland and Scofield, Utah, and Bellevue, Alberta, Canada. Coal, 491.  
 Natchez, Miss., from Mississippi, compressed and reshipped to New Orleans, La. Cotton, 110.  
 Natchez, Miss., to and from Louisiana and Arkansas. Class rates, 464.  
 Natchez, Miss., to and from Texas common point territory. Class rates, 596.

- Natco, N. J., from Mercer-Butler and Pittsburgh districts, Pa. Coal, 49.
- Nebraska to Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Oklahoma. Minimum weight on sugar, 510.
- Nebraska from Cloverport and other points in Kentucky. Clam and mussel shells, 366.
- Nebraska from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.
- Nebraska from Gillespie, Ill. Coal, 335.
- Nebraska from Illinois mines. Bituminous coal, 741.
- Nebraska from Louisiana. Yellow-pine lumber and lumber products, 417.
- Nebraska from Minnesota, Nebraska, and South Dakota. Ice, 618.
- Nepton, Ky., from Sellersburg, Ind. Cement, 362.
- Nevada to Boston, Mass. Wool and mohair, 228.
- Nevada, Mo., from Joplin, Mo. Petroleum products, 313.
- Newark, N. J., to Gibbstown and Carney's Point, N. J. Sulphuric and muriatic acid, 681.
- New Boston colliery, Pa., to Jersey City, N. J. Anthracite coal, 211.
- New England. Divisions, 513.
- New England to and from North Carolina. Class and commodity rates, 64.
- New England from Seaboard, N. J. Coke, 317.
- New Hampshire from Seaboard, N. J. Coke, 317.
- New Haven, Conn., to and from North Carolina. Class and commodity rates, 64 (89).
- New Jersey to and from North Carolina. Class and commodity rates, 64.
- New Jersey from Seaboard, N. J. Coke, 317.
- New London, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- New Mexico to Boston, Mass. Wool and mohair, 228.
- New Mexico from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.
- New Orleans, La., to Birmingham, Ala. Cattle and hogs, 627.
- New Orleans, La., from Crowder, Miss. Slack barrel staves, 147.
- New Orleans, La., to Knoxville, Tenn. Blackstrap molasses, 405.
- New Orleans, La., to Knoxville, Tenn. Cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.
- New Orleans, La., from Louisiana. Gasoline, 733.
- New Orleans, La., to and from Louisiana and Arkansas. Class rates, 464.
- New Orleans, La., from Marianna and Forrest City, Ark., concentrated and compressed at Helena, Ark. Cotton, 303.
- New Orleans, La., to Memphis, Tenn. Blackstrap molasses, 96.
- New Orleans, La., to Minneapolis, Minn. Blackstrap molasses, 469.
- New Orleans, La., from Mississippi, compressed at Natchez, Miss. Cotton, 110.
- New Orleans, La., to and from Texas common-point territory. Class rates, 596.
- New Richmond, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- New River district, W. Va. Car distribution; coal, 269.
- New York to and from North Carolina. Class and commodity rates, 64.
- New York from Seaboard, N. J. Coke, 317.
- New York, N. Y., from Beaver Falls, Pa., Cumberland, Md., and Atlantic seaboard territory, destined to Galveston, Tex. Cold-rolled or drawn steel bars, bar iron, and shafting, 253.
- New York, N. Y., from Knoxville, Tenn. Mixed feed, 657.
- New York, N. Y., from Louisiana. Gasoline, 733.

- New York, N. Y., to and from North Carolina. Class and commodity rates, 64 (89).
- New York, N. Y., from Seattle and Tacoma, Wash., and San Francisco, Calif., imported from Japan. Potato starch, 422.
- New York, N. Y., from Southard, Cement, Ideal, and Okeene, Okla. Cement plaster, 685.
- New York harbor lighterage points, N. Y., to Providence, R. I., and Worcester, Mass. Bananas, 179.
- Norfolk, Va., to Carney's Point, N. J. Nitrate of soda, 109.
- Norfolk, Va., to Charleston, S. C. Kainit, 181.
- Norfolk, Va., from Knoxville, Tenn. Mixed feed, 657.
- Norfolk, Va., to and from North Carolina. Class and commodity rates, 64.
- North Carolina to Carney's Point and Penns Grove, N. J. Lumber, 151.
- North Carolina from Knoxville, Tenn. Mixed feed, 657.
- North Carolina from South Carolina. Poplar and gum logs, 669.
- North Carolina to and from South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware. Class and commodity rates, 64.
- North Dakota from Gillespie, Ill. Coal, 835.
- North Dakota from Illinois mines. Bituminous coal, 741.
- North Fort Worth, Tex., from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo. Hogs, 166.
- North Platte, Nebr., from Louisiana. Yellow-pine lumber and lumber products, 417.
- North Platte, Nebr., to Memphis, Nebr. Ice, 618.
- Oakdale, Calif., from Douglas, W. Va., reconsigned at Chicago, Ill., and subsequently reconsigned to Los Angeles, Calif. Smithing coal, 497.
- Oakland, Calif., from Toledo, Ohio. Wiring harness and starting devices, 693.
- Obert, Nebr., from Spicer, Minn. Ice, 618.
- Oconto, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Official classification territory. Show or display cases, 279.
- Official classification territory. Peddler car service, 875.
- Ohio from Acme, N. Mex., and Acme, Tex. Cement plaster, 119.
- Ohio River, points south of, to Cairo, Ill. Logs, bolts, billets, and poles, 701.
- Ohio River crossings from Alabama and Tennessee. Pig iron, 646.
- Ohio River points to Indiana, Illinois, Iowa, Missouri, Nebraska, and Wisconsin. Clam and mussel shells, 366.
- Okeene, Okla., to New York and Brooklyn, N. Y. (Gulf Line piers only). Cement plaster, 685.
- Oklahoma from Colorado. Canned goods, 433.
- Oklahoma from Colorado, Idaho, Kansas, Nebraska, and Utah. Minimum weight on sugar, 510.
- Oklahoma to and from Kansas, Texas, and Oklahoma. Class rates, 596.
- Oklahoma to Rockford, Ill. Petroleum and products, 18.
- Oklahoma City, Okla., from Burkburnett and Ranger districts, Tex., and Shreveport district, La. Crude petroleum, 93.
- Oklahoma City, Okla., from Carthage and Joplin, Mo. Ice, 677.
- Oklahoma City, Okla., from Sioux Falls, S. Dak., and Kansas City, Mo.-Kana. Cattle and hogs, 171.
- Oldenburg, Ill., to Rockport, Ind. Baled straw, 60.
- Oliver, La., to various points. Gasoline, 733.
- Omaha, Nebr. Demurrage on scrap iron and steel, 483.
- Opelousas, La., to Houston, Tex. Compressed cotton, 495.

- Orange, Tex., from Dubuque, Clinton, and Muscatine, Iowa. Sash, doors, door and window screens, and other millwork, 721 (725).
- Orchard, Nebr., from Spicer, Minn. Ice, 618.
- Oregon to and from Portland, Oreg., and Vancouver, Wash. Class and commodity rates, 633.
- Oregon to various destinations. Lumber and forest products, 218.
- Oregon City, Oreg., to various destinations. Lumber and forest products, 218.
- Osmond, Nebr., from Spicer, Minn. Ice, 618.
- Ottawa, Ill., to Chattanooga, Tenn. Molding sand, 105.
- Owen, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Pacific coast ports from Chicago, Ill., for export. Machinery, merchandise, iron, and steel, 127.
- Pacific coast ports to Chicago, Ill., New York, N. Y., Pennsylvania, and Massachusetts, imported from Japan. Potato starch, 422.
- Pacific coast terminals from Sapulpa, Okla., and Hillsboro, Ill. Glass fruit jars and jelly glasses, 296.
- Park Falls, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Pattison, Miss., to Natchez, Miss., compressed and reshipped to New Orleans, La. Cotton, 110.
- Pembine, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Penns Grove, N. J., from South Carolina, North Carolina, and Virginia. Lumber, 151.
- Pennsylvania to and from North Carolina. Class and commodity rates, 64.
- Pennsylvania from Seattle and Tacoma, Wash., and San Francisco, Calif., imported from Japan. Potato starch, 422.
- Pennsylvania mines to Canton, Ohio. Coal, 726.
- Pennsylvania mines to Jersey City, N. J. Anthracite coal, 211.
- Pennsylvania mines to Perth Amboy, Natco, and Port Murray, N. J. Coal, 49.
- Pennsylvania mines to various destinations. Bituminous coal, 759.
- Pensacola, Fla., to Miami, Ariz. Pine oil, 35.
- Peoria, Ill., from Laredo and Eagle Pass, Tex. Istle fiber, 137.
- Perryville, La., to various points. Gasoline, 733.
- Perth Amboy, N. J., from Mercer-Butler and Pittsburgh districts, Pa. Coal, 49.
- Philadelphia, Pa., to Gloucester, N. J. Refuse, bricks, dirt, excavated material, flue dust, sand, and slag, 291.
- Philadelphia, Pa., from Knoxville, Tenn. Mixed feed, 657.
- Philadelphia, Pa., from Louisiana. Gasoline, 733.
- Philadelphia, Pa., to and from North Carolina. Class and commodity rates, 64 (89).
- Philippine Islands from Detroit, Mich., via San Francisco, Calif. Motor cars, 689.
- Phoenix, Ariz., from California. Fresh fruits and vegetables, 368.
- Phoenix, Ariz., from California. Sugar, 412.
- Phoenix, Ariz., from California, destined to Maricopa and other points in Arizona. Through routes and joint rates; fresh fruits and vegetables, 369.
- Phoenix, Ariz., from California, destined to Maricopa and other points in Arizona, and El Paso, Tex. Through routes and joint rates; sugar, 412.
- Phoenix, Ariz., from Watsonville, Calif. Apples, 500.
- Pittsburgh, Pa. Reconsignment of grain, 506.
- Pittsburgh, Pa. Terminal switching, 248.
- Pittsburgh, Pa., from Louisiana. Gasoline, 733.
- Pittsburgh, Pa., to and from North Carolina. Class and commodity rates, 64 (89).

- Pittsburgh district, Pa., to Canton, Ohio. Coal, 726.
- Pittsburgh district, Pa., to Perth Amboy, Natco, and Port Murray, N. J. Coal, 49.
- Polkton, N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Portage, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Port Arthur, Tex., to Galveston, Tex., for export. Lubricating oil and paraffin wax, 489.
- Port Arthur, Tex., from Watkins, Okla. Secondhand plate-iron tanks, 141.
- Port Chalmette, La., to Birmingham, Ala. Cattle and hogs, 627.
- Port Chester, N. Y., from Seaboard, N. J., via New York harbor. Coke; through routes and joint rates, 317 (323).
- Port Ivory, N. Y., from Mariner's Harbor, Staten Island, N. Y. Copra, 116.
- Portland, Oreg., to and from Idaho, Oregon, and Washington. Class and commodity rates, 633.
- Port Murray, N. J., from Mercer-Butler and Pittsburgh districts, Pa. Coal, 49.
- Potomac River, points north of, from Knoxville, Tenn. Mixed feed, 657.
- Prentice, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Prospect, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Providence, R. I., from New York harbor lighterage points and Harlem River, N. Y. Bananas, 179.
- Raleigh, N. C., to Elberton, Ga. Class and commodity rates, 64 (71).
- Raleigh, N. C., from Knoxville, Tenn. Mixed feed, 657.
- Ranger district, Tex., to Oklahoma City, Okla. Crude petroleum, 93.
- Rantoul, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Reading, Pa., to and from North Carolina. Class and commodity rates, 64 (89).
- Red Bank, Ohio, from Ancor, Ohio. Silicate of soda, 471.
- Red Wing, Minn., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Republic, Mo., from Joplin, Mo. Petroleum products, 313.
- Republic, Mo., to Westville, Okla. Empty barrels, 45.
- Rhineland, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Rhode Island from Seaboard, N. J. Coke, 317.
- Rich Hill, Mo., from Joplin, Mo. Petroleum products, 313.
- Richmond, Va., from Knoxville, Tenn. Mixed feed, 657.
- Richmond, Va., to and from North Carolina. Class and commodity rates, 64.
- Ridge Farm, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Ripon, Wis., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Rochester, N. Y., to and from North Carolina. Class and commodity rates, 64 (89).
- Rockford, Ill., from Illinois mines. Bituminous coal, 741.
- Rockford, Ill., from Kansas and Oklahoma. Petroleum and products, 13.
- Rock Island, Ill., to Minnesota Transfer, Minn. Steel horse collars, 629.
- Rockport, Ind., from Oldenburg, Ill. Baled straw, 60.
- Rocky Ford, Colo., to Oklahoma. Canned goods, 488 (484).
- Rocky Mount, N. C., to Mullins, S. C. Class and commodity rates, 64 (71).
- Rosalie, Nebr., from Spicer, Minn. Ice, 618.
- Rosamond, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Roseboro N. C., to Carney's Point and Penns Grove, N. J. Lumber, 151.
- Rothschild, Wis., from Wausau, Wis. Shavings and sawmill refuse, 56.
- Ruston, La. Compression, concentration, and reshipment of cotton, 26.
- Rutherfordton, N. C., from South Carolina. Poplar and gum logs, 669.

- St. Elmo, Miss., to Natchez, Miss., compressed and reshipped to New Orleans, La. Cotton, 110.
- St. Francis, Kans., from Louisiana. Yellow-pine lumber and lumber products, 417.
- St. Francisville, Ill., to Vincennes, Ind. Tomatoes, 28.
- St. James, Minn., to Sioux City, Iowa. Ice, 618.
- St. Louis, Mo., to Chicago, Ill. Ice, 618.
- St. Louis, Mo., from Corinth, Calhoun City, and Lexington, Miss. Sorghum sirup, 62.
- St. Louis, Mo., from Illinois mines. Bituminous coal, 741 (752).
- St. Louis, Mo., from Louisiana. Gasoline, 783.
- St. Paul, Minn., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- St. Paul, Minn., from Illinois mines. Bituminous coal, 741.
- St. Paul, Minn., to Sioux City, Iowa. Ice, 618.
- Salisbury, N. C., to Toccoa, Ga. Class and commodity rates, 64 (71).
- Salt Lake City, Utah, from Birmingham and other points in Alabama and Tennessee. Pig iron, 7.
- San Antonio, Tex., from Lake Charles, La. Cypress lumber and shingles, 714.
- San Diego, Calif., from Minneapolis, Minn. Gasoline motor cars, 675.
- Sanford, N. C., to Fairfax, S. C. Class and commodity rates, 64 (71).
- San Francisco, Calif. Demurrage and storage charges on motor cars, 689.
- San Francisco, Calif., to Chicago, Ill., New York, N. Y., Pennsylvania, and Massachusetts, imported from Japan. Potato starch, 422.
- San Francisco, Calif., from Dewar, Okla., for export. Carbon black, 183.
- San Francisco, Calif., to Maricopa and other points in Arizona, via Phoenix, Ariz. Through routes and joint rates; fresh fruits and vegetables, 368.
- San Francisco, Calif., to Maricopa, Ariz., and points east thereof, including El Paso, Tex., via Phoenix, Ariz. Through routes and joint rates; sugar, 412.
- San Francisco, Calif., to Seattle, Wash. Steel ingots, 207.
- Sapulpa, Okla., from Drace, Okla. Crude petroleum, 493.
- Sapulpa, Okla., to Pacific coast terminals and intermediate points. Glass fruit jars and jelly glasses, 296.
- Sault Ste. Marie, Mich., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Savannah, Ga., to Knoxville, Tenn. Blackstrap molasses, 405.
- Saxton, Ky., from Sellersburg, Ind. Cement, 862.
- Scofield, Utah, to Naches, Eureka, and Mabton, Wash. Coal, 491.
- Scottsdale, Pa. Interchange switching and spotting service, 389.
- Scottsville, Ky., from Sellersburg, Ind. Cement, 862.
- Seranton, Pa., to and from North Carolina. Class and commodity rates, 64 (89).
- Seaboard, N. J., to New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and New Jersey. Coke, 317.
- Seattle, Wash., to Chicago, Ill., New York, N. Y., Pennsylvania, and Massachusetts, imported from Japan. Potato starch, 422.
- Seattle, Wash., to Chicago, Ill., New York, N. Y., Pennsylvania, and Massachusetts, imported from Japan. Carbon black, 183.
- Seattle, Wash., to San Francisco and South San Francisco, Calif. Steel ingots, 207.
- Seattle, Wash., to Portland, Ore. Pig iron, 144.
- Seattle, Wash., to Portland, Ore. Cement, 862.
- Seattle, Wash., to Portland, Ore. Lumber, 151.
- Seattle, Wash., to Portland, Ore. Cement, 862.
- Seattle, Wash., to Portland, Ore. Class and commodity rates, 64 (71).
- Seattle, Wash., to Portland, Ore. Cement, 862.

- Sheltons, La., to various points. Gasoline, 733.
- Sherman, Ky., to interstate destinations. Lumber, 345.
- Shreveport, La., from Benton, Ark. Gravel, 123.
- Shreveport district, La., to Oklahoma City, Okla. Crude petroleum, 93.
- Sidnaw, Mich., from Grand Rapids, Mich. Plaster and gypsum products, 237.
- Sidney, Ill., from Lafayette, Ind. Sand and gravel, 729 (732).
- Silver Lake, Wis., from Chippewa Falls, Wis. Ice, 618.
- Sioux City, Iowa, from Illinois mines. Bituminous coal, 741.
- Sioux City, Iowa, from Minnesota, South Dakota, and Wisconsin. Ice, 618.
- Sioux City, Iowa, to North Fort Worth, Tex. Hogs, 166.
- Sioux Falls, S. Dak., to Oklahoma City, Okla. Hogs, 171.
- Southard, Okla., to New York and Brooklyn, N. Y. (Gulf Line piers only).  
Cement plaster, 685.
- South Carolina to Carney's Point and Penns Grove, N. J. Lumber, 151.
- South Carolina to Kingsport, Tenn. Pulp wood, 277.
- South Carolina from Knoxville, Tenn. Mixed feed, 657.
- South Carolina to North Carolina. Poplar and gum logs, 669.
- South Carolina to and from North Carolina, and Norfolk and Richmond, Va.  
Class and commodity rates, 64.
- South Dakota to Ashland, Nebr., and Sioux City, Iowa. Ice, 618.
- South Dakota from Gillespie, Ill. Coal, 335.
- South Dakota from Illinois mines. Bituminous coal, 741.
- Southeastern territory to and from North Carolina. Class and commodity rates, 64.
- Southern classification territory. Peddler car service, 375.
- Southern points to Knoxville, Tenn. Cottonseed meal, peanut oil-cake meal, velvet-bean meal, soya-bean meal, palm-kernel meal, and copra meal, 657.
- Southern territory. Rating on common or laundry soap, soap powders, and washing, cleansing, and scouring compounds, 307.
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### ABSORPTION. *See also* SWITCHING.

Proposal of the Hocking Valley Ry. to reduce the amount of its absorption of switching charges of other carriers on c. l. traffic at Toledo, Ohio, resulting in increased through charges to the shipper, found not justified. Absorption of Switching Charges at Toledo, 30.

The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates, 1920*, 58 I. C. C., 220. *Id.* (31).

Upon reconsideration, finding in original report, 58 I. C. C., 92, wherein practice of the C. R. R. Co. of N. J., in refusing to absorb switching charges of the East Jersey R. R. & Term. Co., on interstate traffic from or to complainant's industry, while absorbing such charges on like traffic when shipped by or consigned to independent industries served only by the East Jersey, was found not discriminatory or unduly prejudicial, affirmed. *Tidewater Oil Co. v. Director General*, as Agent, 226.

If carriers absorb switching charges for one shipper, they must do the like for all others similarly situated and entitled to like treatment. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (262).

Failure of defendants to provide for absorption of charges for interchanging interstate inbound c. l. traffic at Downingtown, Pa., or to interchange outbound traffic at that point and provide charges therefor, not found unreasonable, discriminatory, or unduly prejudicial. If such switching arrangements were established, carrier would be required to hand traffic over to its competitor and short haul itself. *Miller Paper Co. v. P. R. R. Co.*, 705.

A trunk line can not be compelled to absorb the switching charge of a connecting line in the absence of unjust discrimination or undue prejudice. *Id.* (708).

The Commission has repeatedly declined to require absorption of switching charges, except where necessary to remove unjust discrimination or undue prejudice, although in appropriate cases it may prescribe reasonable joint rates between points on switching and trunk lines. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729 (732).

### ADDITIONS AND BETTERMENTS.

Under paragraph 21 of section 1 of the act, the Commission may require a carrier to extend its line only when the extension is reasonably required in the interest of public convenience or when the expense involved will not impair the ability of the carrier to perform its duty to the public. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261-262).

### ADJACENT FOREIGN COUNTRY. *See* CANADA.

**ADJUSTMENT OF RATES.** *See also* RELATIONSHIP OF RATES; RELATIVE ADJUSTMENT.

Rates on crude petroleum, in tank-car loads, from the Burkburnett and Ranger districts, in Texas, and the Shreveport district, in Louisiana, to Oklahoma City, Okla., were the same as the rates to Cushing, Okmulgee, Sapulpa, and Tulsa, Okla. Following rate adjustment higher rates became effective to Oklahoma City, which were subsequently corrected by a reduction. *Held*: Rates charges during interim not found unreasonable and complainant not shown damaged by alleged undue prejudice. *Choate Oil Corp. v. Director General*, as Agent, 93.

Upon further hearing, readjustment of rates on plaster and gypsum products from Ft. Dodge, Gypsum, and Mineral City, Iowa, and Grand Rapids, Mich., to certain territory in Wisconsin, Michigan, and Minnesota, proposed by defendants in conformity with findings in original report, 57 I. C. C., 264. disapproved, and a reasonable and nonprejudicial adjustment from Grand Rapids, prescribed. *Grand Rapids Plaster Co. v. Director General*, 237.

Rate on crude petroleum from Junction City, Okla., to Lawton, Okla., during federal control, increased at various times by the Director General, found unreasonable as compared with rates to or from other refining points for longer distances. Reparation awarded on basis of lower rate subsequently established in connection with a general revision of rates on crude petroleum in the midcontinent field. *Lawton Refining Co. v. Director General*, as Agent, 480.

Following *Atlantic Refining Co.*, 58 I. C. C., 46, rate on crude petroleum, moving intrastate during federal control, increased at various times by the Director General, and subsequently reduced, found not unreasonable, as the fluctuations were due to a general readjustment of rates on petroleum and its products throughout the entire country. *Sapulpa Refining Co. v. Director General*, as Agent, 493.

Proposed adjustment of class rates between points in Kansas and points in Oklahoma; between points in Kansas and Oklahoma and points in Texas; between points in Texas, on the one hand, and points in Arkansas and in Louisiana, and Memphis, Tenn., Vicksburg and Natchez, Miss., on the other; and between points in Oklahoma on interstate traffic, to bring about a more harmonious adjustment in southwestern territory, found not justified. Extension of Memphis-Southwestern Scale, 596.

**ADMINISTRATIVE RULINGS.** *See* CONFERENCE RULINGS; RULES OF PRACTICE; TARIFF CIRCULAR 18-A.

**ADVANCE IN RATES.** *See also* DOUBLE INCREASE.

**In General:**

Refusal of carrier to accept certain shipments when tendered for transportation after close of business on day preceding effective date of increased rates, found not to have resulted in unreasonable or unlawful charges, and the acceptance of occasional shipments from complainant after closing hours found not to establish the existence of such a practice. *Transcontinental Freight Co. v. Director General*, as Agent, 127.

The percentage of increase under general order No. 28 is not controlling if the resulting rates are reasonable. *Ault & Wiborg Co. v. Director General*, as Agent, 133 (134).

## ADVANCE IN RATES—Continued.

## In General—Continued.

Director General expressed willingness to award reparation to basis of lower rates subsequently established but contended that reparation should not be awarded to a lower basis on shipments moving prior to June 25, 1918, as the causes which justified the increases made effective on that date existed prior thereto. *Held*: Extent to which causes existed prior to June 25, 1918, but vaguely indicated and contention overlooks fact that a shipper is entitled to a reasonable rate. *Nagase & Co. v. Director General*, as Agent, 422 (425-426).

Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (431). Fact that in the great majority of instances rates were increased only 25 per cent under general order No. 28, while the rate charged represented an increase exceeding 25 per cent of the rate previously in effect, does not afford a basis for a finding of unreasonableness. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Carriers are not relieved of the burden of justifying increases in rates and charges permitted by fifteenth section orders of the Commission.

*Leavenworth Chamber of Commerce v. Director General*, 697 (698).

**Bananas:** Rates on, from New York harbor lighterage points, N. Y., to Providence and Worcester, Mass., increased following *Proposed Increases in New England*, 49 I. C. C., 421 and under general order No. 28 of the Director General, not found unreasonable as compared with lower rate from Philadelphia, Pa., and Newark, N. J., farther distant points, or with lower rates subsequently established from lighterage points. *Providence Fruit & Produce Exchange v. Director General*, as Agent, 179.

**Bolts, iron or steel:** Proposed increased rates on, l. c. l., from Kansas City, Mo., to Galveston and Beaumont, Tex., and points taking same rates, which are in excess of the New Orleans combinations and of the rates from St. Louis, Mo., through Kansas City to the same destinations, found not justified, but to extent they are not in excess of such rates, found justified. Bolts from Kansas City to Texas Points, 9.

**Grain and feed, transit:** Proposal of the Hocking Valley Ry., to reduce the amount of its absorption of switching charges of other carriers on c. l. traffic at Toledo, Ohio, resulting in increased through charges to the shipper, found not justified. Absorption of Switching Charges at Toledo, 30.

**Iron, pig:** Proposed increased group rates on, from southeastern points, particularly in Alabama and Tennessee, to Utah common points, found not justified. Pig Iron from Southeastern Points to Utah, 7.

**Iron ore:** Rates on, from producing points in Wisconsin and Michigan to Granite City, Ill., increased out of proportion to the increases to Pittsburgh, Pa., and Ironton, Ohio, following *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable. Reparation awarded and reasonable maximum rates prescribed. *St. Louis Coke & Chemical Co. v. A. & S. R. R. Co.*, 194.

**Passenger fares:** Proposed increased single and commutation fares of the Washington-Virginia Ry. Co., an electric line, between points on its system and Washington, D. C., approved in part. Fares of the Washington-Virginia Ry. Co., 200.

**ADVANCE IN RATES—Continued.**

**Petroleum products:** Rates on, moving intrastate during federal control, as increased on June 25, 1918, under general order No. 28 and subsequently readjusted by substitution of a flat increase of 4.5 cents in lieu of 25 per cent, found not unreasonable. *Wilholt Oil Co. v. Director General*, as Agent, 313.

**Plaster, cement:** Proposed cancellation of joint rail-and-water rate on, from Southard, Okla., and points grouped therewith, to New York and Brooklyn, N. Y. (Gulf Line piers only), applicable via Galveston, Tex., leaving in effect higher combination rates, found not justified. *Rail-and-Water Rates on Plaster*, 685.

**Shells, clam or mussel:** Proposed cancellation of joint commodity rates on, from Kentucky points on the Ohio River to various destinations, leaving in effect higher combination rates, found justified. Only one carload of uncut shells has moved since 1918, and probability of further movement depends entirely upon market conditions. *Clam and Mussel Shells from Kentucky Points*, 366.

**Soap, etc.:** Fourth-class l. c. l. rating on common or laundry soap, soap powders, and washing, cleansing, and scouring compounds, moving into or within southern territory published in consolidated classification No. 1, found not unreasonable. The increase in rating was necessary and incident to the change in description made by eliminating value as the sole determinative of rating and by substituting a c. l. and l. c. l. basis for the any-quantity basis then observed in that classification so as to bring about identity of description in all classifications. *Globe Soap Co. v. Director General*, as Agent, 307.

**Wood, pulp:** Proposed increased rates on, from points in South Carolina and Georgia on the Charleston & Western Carolina Ry. Co., to Kingsport, Tenn., found not justified. *Pulp Wood to Kingsport, Tenn.*, 277.

**Switching:** Increased charges of the Leavenworth & Topeka R. R. for switching to and from team tracks at Leavenworth, Kans., found unreasonable to extent they exceed \$5 per car, but increased charges for switching between industries and connecting lines found justified as defendant's revenues do not afford more than a fair return on the value of the property devoted to the switching service over and above the cost of such service. *Leavenworth Chamber of Commerce v. Director General*, 697.

**ADVANTAGES AND DISADVANTAGES. See also LOCATION.**

It is not the Commission's duty to inquire into or adjust the relative advantages or disadvantages resulting from purely business or commercial conditions. *Hollingshead Co. v. Director General*, as Agent, 147 (150).

**AFFIDAVIT.**

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object to receipt of such an affidavit further hearing may be requested regarding subject of reparation. *Phoenix Chamber of Commerce v. Director General*, as Agent, 412 (416); *Phoenix Chamber of Commerce v. S. P. Co.*, 500 (502); *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (725).

**AGENT.** *See also* ASSOCIATION.

Where short line found not to be a common carrier is not to say that it is unlawful for trunk lines to pay reasonable compensation to such short line as its agent or a reasonable allowance to the industry under section 15 of the act, for performing through its industrial railroad any portion of the service customarily included in the line-haul rates which they do not elect to do for themselves. *Wyandotte Terminal R. R. Co.*, 1 (5).

Contracts under which a subsidiary to a proprietary industry acts as switching agent for carriers not shown to violate the act and the Commission is without power to abrogate such contracts or revise their terms. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248 (252).

**AGGREGATE OF INTERMEDIATES.** *See* THROUGH AND LOCAL.**AGREEMENT.** *See also* CONTRACTS; STIPULATION; TRACKAGE AGREEMENTS.

Siding agreement between Mountain Smokeless Coal Co. and defendant provided that use by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefor was not reasonable. *Held*: Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co. and defendant permitted cars to be furnished at such other sidings. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (482).

**ALLEGHENY & SOUTH SIDE RAILWAY COMPANY.**

History and description of. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248-249.

Found not to be a common carrier subject to the act. *Id.* (252).

**ALLOWANCES.**

Where short line found not to be a common carrier is not to say that it is unlawful for trunk lines to pay reasonable compensation to such short line as its agent or a reasonable allowance to the industry under section 15 of the act, for performing through its industrial railroad any portion of the service customarily included in the line-haul rates which they do not elect to do for themselves. *Wyandotte Terminal R. R. Co.*, 1 (5).

Defendants' refusal to switch and spot cars at complainant's plant at Fordwick, Va., or to compensate complainant for performing such service, found not unreasonable or unduly prejudicial. Carrier never performed such service, rates were not originally constructed to include that service, and complainant has not shown that it is prejudiced by fact that some competitors at other points are given spotting service without charge in addition to line-haul rates. *Lehigh Portland Cement Co. v. Director General*, as Agent, 231.

Failure of trunk lines to make an allowance to complainant or its plant facility, *Scottdale Connecting R. R. Co.*, for performing interchange switching and spotting service at complainant's plant at *Scottdale, Pa.*, found not to have resulted in unreasonable, discriminatory, or unduly prejudicial rates. Complainant does not demand, nor has it ever demanded, performance of the service by the trunk lines, preferring to do the work itself, and it would not be possible for the trunk lines to operate within the plant with available equipment because of excessive track curvature. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 339.



**ALLOWANCES—Continued.**

It is the right of carriers to perform any transportation service which it is their duty to perform, and in the absence of undue prejudice the Commission is without power to require them to make an allowance. *Id.* (848-844).

**"AMONG OTHER THINGS."**

Words "without regard to the mileage haul" in paragraph (6), section 15 of the act, do not forbid consideration of the element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other elements may outweigh element of distance, in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. *New England Divisions*, 518 (561).

**ANALOGOUS ARTICLES.** *See also* COMPARATIVE RATES; SECTION 2.

Screens readily load in excess of the minimum weight, and mixed carload shipments of screens, sash, and doors are frequently desired by small purchasers. Continuation of the distinction in classification and rates on the two kinds of millwork not warranted, and all these items should move on the same basis. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (724).

**ANY-QUANTITY RATES.** *See also* LESS THAN CARLOADS.

Assessed on a sporadic shipment of steel horse collars from Davenport, Iowa, and Rock Island, Ill., to Minnesota Transfer, Minn., found not unreasonable as compared with rate on iron hames and cloth covered collars of which there is a considerable c. l. movement. *Barrett & Zimmerman v. Director General*, as Agent, 629.

**APPLICATION.****Section 15:**

Allegation that increased classification rating is illegal because filed with the Commission before January 1, 1920, without prior approval as then required by section 15, *Held*: Fifteenth section applications were not filed to cover consolidated classification No. 1, and no approval from the Commission under that section was necessary as to lines under federal control. *Globe Soap Co. v. Director General*, as Agent, 807 (811).

Carriers are not relieved of the burden of justifying increases in rates and charges permitted by fifteenth section orders of the Commission. *Leavenworth Chamber of Commerce v. Director General*, 697 (698).

**APPREHENSIONS OF PARTIES.**

Apprehensions of shipper can not be accepted by the Commission as equivalent to fact. *National Wholesale Grocers' Asso. v. Director General*, 875 (382).

**ARBITRARIES.** *See* DIFFERENTIALS.**ARGUMENT.** *See* FURTHER ARGUMENT.**ASSOCIATION.**

Defendant contested rights of complainant, an association, to maintain a claim for reparation on ground that it did not pay any of the charges complained of and is not empowered to bring suit in behalf of its members. *Held*: Since prayer of complaint specifically named the members

**ASSOCIATION—Continued.**

of complainant's organization who paid the charges and asked that they be awarded reparation, the members so named are co-complainants with the association, although not styled such in the caption of the complaint. *Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 506 (507-508).*

**BAGGAGE.**

Excess baggage charges required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate charges authorized in *Increased Rates, 1920, 58 I. C. C., 220*, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges, 440.*

**BENWOOD & WHEELING CONNECTING RAILWAY COMPANY.**

Found to be a common carrier subject to the act and basis of payment for use or detention of foreign cars on its line, prescribed. *B. & W. C. Ry. Co. v. P., C., C. & St. L. R. R. Co., 357.*

History and description of. *Id. (357-358).*

**BETTERMENTS. See ADDITIONS AND BETTERMENTS.****BLANKET RATES. See also GROUP RATES.**

Every blanket adjustment necessarily involves more or less disregard of distance and varying degrees of inequality. *Monroe Shingle Co. v. Director General, as Agent, 714 (717).*

**BOAT LINES.**

Water craft are operated under conditions which make it impossible to predict at all times the precise date of docking and clearing, and rail carriers can not be held responsible therefor. *American Smelting & Refining Co. v. Director General, as Agent, 583 (588).*

**BOTH DIRECTIONS.**

Rate on gasoline motor cars, dead, on their own wheels, from Minneapolis, Minn., to San Diego, Calif., found unreasonable to extent it exceeded lower rate in the opposite direction, which lower rate was subsequently established via route of movement after request therefor made. Reparation awarded. *San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co., 675.*

**BRANCH-LINE POINTS.**

Rates on slack-barrel staves from Crowder, Miss., located on the Batesville Southwestern R. R., to interstate points, found not unreasonable, but unduly prejudicial to extent they exceed the group rates applicable from Batesville, Miss., the junction point of that carrier with the Illinois Central, and Charleston, Miss., a branch-line point. Relationship of rates prescribed. *Hollingshead Co. v. Director General, as Agent, 147.*

There is no substantial difference between the cost of service from points on short-line connections not operated by trunk lines and that from points on branch lines. *Id. (149).*

Combination rates on lumber from Sherman, Ky., a local point on the Big Sandy & Kentucky River Ry., to interstate destinations found not unreasonable or unduly prejudicial because in excess of 2 cents per 100 pounds over the rate from Dawkins, Ky., the junction point of that carrier with the C. & O. Ry., and while it appears that the Sherman to Dawkins factor of the through rate yielded somewhat high earnings, they are not exorbitant when consideration is given to the fact that the distance is short and the country traversed mountainous. *Burns & Knapp v. B. S. & K. R. Ry. Co., 345.*

**BURDEN OF PROOF.**

Rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates*, 1920, 58 I. C. C., 220. Absorption of Switching Charges at Toledo, 30 (81).

Carriers are not relieved of the burden of justifying increases in rates and charges permitted by fifteenth section orders of the Commission. *Leavenworth Chamber of Commerce v. Director General*, 697 (698).

**CANADA.**

With respect to divisions accruing to carriers out of joint rates with Canadian connections, the Commission's jurisdiction inheres only in so far as the transportation takes place within the United States. *New England Divisions*, 513 (516).

**CAPITALIZATION.** See **OVERCAPITALIZATION.****CAR DISTRIBUTION.**

Mines which are given a joint status by reason of their being served under trackage agreements are in the same category as junction-point mines, and any preference and advantage which such mines enjoy is not undue, as actual or constructive location upon two or more lines substantially differentiates their situation from that of local mines, situated on and served only by one railroad. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259; *Dering Mines Co. v. Director General*, 265.

Following *Illinois Case*, 25 I. C. C., 286, rule 4 of Circular CS-31, Revised, governing method for ordering cars for mines, found unreasonable and unduly prejudicial to joint mines and unduly preferential of local mines to extent that it limits the aggregate orders of the joint mines to 100 per cent of their rating from both roads. Reasonable and nonprejudicial rules prescribed for the future. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269.

At time of adoption of Circular CS-31, governing method for ordering cars for mines, no consideration was given to the length of time the rules were to be made operative, although the fact that the roads were being operated as a unit under federal control was a prime reason for the adoption. *Id.* (274).

While a joint mine has an advantage over local mines because of the additional markets which it can reach by reason of its location on two railroads, such mine can not always avail itself of its advantage because of the practice in the coal business to make contracts for yearly periods. Neither is it possible at all times to order all cars from the carrier having the greater supply as its contracts may also require that shipments be made by the line having the lesser supply. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater supply. *Id.* (275).

While matters of car supply must be considered, they do not constitute ground for depriving a shipper of nonprejudicial rates. *Gillespie Coal Co. v. I. T. S.*, 335 (337).

**CAR FURNISHING.**

Refusal of defendants to furnish, upon reasonable request therefor, cars to complainant for the transportation of bituminous coal, while furnishing such cars to other mine owners and operators, competitors of complainant and similarly located on private sidings on which two tipples are maintained, found to subject complainant to undue prejudice and disadvantage to the undue preference and advantage of such competitors. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429.

**CAR FURNISHING—Continued.**

Investments of complainant's competitors in mines served by a siding on which two tipples were installed will not be considered by the Commission as justifying carrier's refusal to furnish cars to complainant under substantially similar circumstances and conditions. *Id.* (431).

Siding agreement between Mountain Smokeless Coal Co. and defendant provided that use by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefor was not reasonable. *Held*: Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co., and defendant permitted cars to be furnished at such other sidings. *Id.* (432).

**CARLOAD AND LESS THAN CARLOAD. See also LESS THAN CARLOAD.**

In original report, 60 I. C. C., 757, rates on peanut oil, in tank-car loads, and on l. c. l. shipments in barrels, from Suffolk, Va., to Macon, Ga., found not unreasonable. Upon further consideration, rates on shipments in tank-car loads found unreasonable and reparation awarded. Prior finding as to l. c. l. shipments, affirmed. *Procter & Gamble Co. v. Director General*, as Agent, 713.

**CARLOAD RATES.**

Are almost always made upon the condition that the shipper and consignee will load and unload the freight, and upon the theory that the freight will not pass through the carrier's warehouse. *Dodge Bros. v. Director General*, as Agent, 689 (691).

**CAR-MILE EARNINGS. See EARNINGS.****CAR SERVICE.**

Under paragraph 13 of section 1 of the act, the Commission is authorized to require carriers to file their rules and regulations with respect to car service, and it may direct that such rules and regulations be incorporated in the schedules showing rates, fares, and charges for transportation and be subject to the provisions of the act relating thereto. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (276).

The Commission has not required that car service rules be filed as tariff schedules. *Id.* (276).

While the Commission did not direct that certain car service rules be filed, as it may have required carriers to do under the provisions of section 1 of the act, it was expected that carriers promptly amend such rules to conform to the findings, and evidence same by filing copies with the Commission. *Id.* (276).

**CAR SHORTAGE.**

That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. *Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co.*, 228 (230).

In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed, such rules and charges were promptly cancelled. *Held*: Establishment thereof was fully justified even

**CAR SHORTAGE—Continued.**

though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. *Omaha Chamber of Commerce v. C. B. & Q. R. R. Co.*, 655.

**CARS MOVING ON OWN WHEELS.**

Rate on gasoline motor cars, dead, on their own wheels, from Minneapolis, Minn., to San Diego, Calif., found unreasonable to extent it exceeded lower rate in the opposite direction, which lower rate was subsequently established via route of movement after request therefor made. Reparation awarded. *San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co.*, 675.

**CAR SPOTTING. See SPOTTING CARS.****CASTINGS.**

Molten steel, cast into convenient shape for handling, whether square or octagonal in cross section, is an ingot and constitutes raw material out of which an article of some different size and shape is to be made. When cast in molds accurately fashioned from patterns to produce the particular sizes and shapes required for a specific article, it is a casting which comes from the mold in the same general form that it retains as a finished article. *Pacific Coast Steel Co. v. Director General*, as Agent, 207 (208).

**CHARACTERISTICS OF COMMODITY.**

Pulp wood is a commodity of low value, moves under low rates, in large volume, in practically any kind of car, and is not liable to damage. *Pulp Wood to Kingsport, Tenn.*, 277 (278).

**CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD.**

Found to be a common carrier subject to the act, and in its interurban operations, both state and interstate, is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and this Commission. *Interstate Fares of the C., N. S. & M. R. R.*, 188 (193).

**CIRCUMSTANCES AND CONDITIONS.**

Owing to extraordinary conditions complainant was unable to obtain sufficient coal from the Westmoreland district of Pennsylvania from which its supply is ordinarily obtained, and shipments were made from certain points in the Mercer-Butler and Pittsburgh districts to Perth Amboy, Natco, and Port Murray, N. J. *Held*: Combination rates charged, while higher, distance considered, than those prevailing from near-by points to same destinations or points in that vicinity, over the same or other routes, found not unreasonable and establishment of joint rates found not warranted. *National Fireproofing Co. v. Director General*, as Agent, 49.

Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. *Id.* (55).

Upon rehearing, maintenance by defendants of junction-point rates on coal to points on the Morristown & Erie R. R., while refusing to maintain such rates to points on the Mount Hope Mineral R. R., found not to result in undue prejudice as circumstances and conditions surrounding the movements are substantially different and there are no industries on the Morristown which compete with industries on the Mineral. Original report, 56 I. C. C., 158, reversed. *Empire Steel & Iron Co. v. Director General*, 157.

**CIRCUMSTANCES AND CONDITIONS—Continued.**

The handling of a shipment in a peddler car which is loaded in station order at the packer's plant as compared with a l. c. l. shipment, through the carriers' freight houses, is a handling under different circumstances and conditions. They are not comparable, and the Commission does not think that a finding of undue prejudice could be based upon that condition, especially when carriers accord to the grocers a reasonably comparable service by holding themselves out to furnish station-order cars. *National Wholesale Grocers' Asso. v. Director General*, 375 (402).

**CLASS AND COMMODITY RATES. See also CLASS RATES; COMMODITY RATES.**

Class rates on niter cake from Hercules, Calif., and Bacchus and Garfield Smelter, Utah, to McGill, Nev., exceeded lower commodity rates subsequently established. Reparation awarded. *Nevada Consolidated Copper Co. v. B. & G. Ry. Co.*, 22.

Class rate on ripe tomatoes from Jackson and St. Francisville, Ill., to Vincennes, Ind., found unreasonable as compared with lower commodity rates between other points in the same general territory for similar distances. Reparation awarded on basis of commodity rate from St. Francisville, subsequently established. *Dyer Packing Co. v. Director General*, as Agent, 28.

Sixth-class rate on pig iron from Memphis, Tenn., to Belleville, Ill., found unreasonable to extent it exceeded "special iron articles" commodity rate contemporaneously in effect from and to the same points. Reparation awarded. *Tuffi Bros. Pig Iron & Coke Co. v. Director General*, as Agent, 107.

Minimum class rate legally applicable on sporadic intrastate shipments of copra, moving during federal control from the Vandam warehouse at Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., found not unreasonable as compared with lower commodity rates applying from and to stations between which there is a regular way-freight train service and a regular switching movement, conditions which do not obtain in connection with traffic from or to the Vandam warehouse. *Procter & Gamble Mfg. Co. v. Director General*, as Agent, 116.

Fourth-class rate onistle fiber from Laredo and Eagle Pass, Tex., to Peoria, Ill., found unreasonable as compared with lower commodity rates on other commodities possessing analogous transportation characteristics, and with lower commodity rates from Texas and other gulf ports to Peoria. Reparation awarded on basis of commodity rate subsequently established. *Peoria Cordage Co. v. Director General*, as Agent, 137.

Fifth-class rate on secondhand plate-iron tanks, k. d., from Watkins, Okla., to Port Arthur, Tex., found unreasonable to extent it exceeded lower commodity rate from Tulsa and Sand Springs, Okla., for greater distances, which lower rate was subsequently established from Watkins. Reparation awarded. *Mexican Gulf Oil Co. v. Director General*, as Agent, 141.

The maintenance of commodity rates on castings lower than the class rates on ingots does not of itself establish that the latter are too high. *Pacific Coast Steel Co. v. Director General*, as Agent, 207.

Class rate legally applicable on cotton seed from Henderson, N. C., to Dublin, Ga., found unreasonable as compared with lower commodity rates between other points, distance considered. Reasonable rate prescribed for the future and reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent, 288.

## CLASS AND COMMODITY RATES—Continued.

Following *Du Pont de Nemours & Co.*, 43 I. C. C., 1, and 45 I. C. C., 479, sixth-class rate on sporadic shipments of low grade commodities useless for any purpose other than filling in and grading, found unreasonable and reparation awarded on basis of commodity rate subsequently established. *Pusey & Jones Co. v. Director General*, as Agent, 291.

Proposed cancellation of joint commodity rates on mussel or clam shells from Cloverport and other Kentucky points on the Ohio River to various destinations, leaving in effect higher combination rates, found justified. Only one carload of uncut shells has moved from Cloverport since 1918, and probability of further movement depends entirely upon market conditions. *Clam and Mussel Shells from Kentucky Points*, 366.

Exception to the classification publishing rates as percentages of certain class rates does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Sixth-class rates on ice from *Fleischmann's*, N. Y., to Grand Gorge and Hobart, N. Y., during federal control, found unreasonable as compared with rates on other low-grade commodities for like and greater distances between neighboring points and with rates on the same commodity between other points for greater distances. Reparation awarded on basis of lower commodity rate subsequently established. *Sheffield Farms Co. v. Director General*, as Agent, 508.

Class rates on ice between points in western trunk line territory, state and interstate, and between St. Louis, Mo., or East St. Louis, Ill., and Chicago, Ill., exceeded lower commodity rates subsequently established for like distances. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 618.

## CLASSIFICATION.

In General: Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Cases, show: Official classification rating of double first class on l. c. l. shipments of show or display cases, counter or floor, when applied on display cases of small dimensions, found not unreasonable. *Specialty Display Case Co. v. Director General*, as Agent, 279.

Millwork: Screens readily load in excess of the minimum weight, and mixed c. l. shipments of screens, sash and doors are frequently desired by small purchasers. Continuation of the distinction in classification and rates on the two kinds of millwork not warranted, and all these items should move on the same basis. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (724).

Soap, etc.: Fourth-class l. c. l. rating on common or laundry soap, soap powders, and washing, cleansing, and scouring compounds, moving into or within southern territory published in consolidated classification No. 1, found not unreasonable. The increase in rating was necessary and incident to the change in description made by eliminating value as the sole determinative of rating and by substituting a c. l. and l. c. l. basis for the any-quantity basis then observed in that classification, so as to bring about identity of description in all classifications. *Globe Soap Co. v. Director General*, as Agent, 307.

**CLASS RATES.** *See also CLASS AND COMMODITY RATES.*

On gravel from Benton, Ark., to Shreveport, La., found unreasonable to extent they exceeded rates for similar distances prescribed in the *Shreveport Case*, 48 I. C. C., 312, 351, as subsequently increased under general order No. 28. Measure of reasonable maximum rates prescribed and reparation awarded. *Shreveport Producing & Refining Corp. v. Director General*, as Agent, 123.

Charged on automobile floor, toe, and running boards from Detroit, Mich., to Melrose, Calif., found unreasonable. Reparation awarded and reasonable maximum basis of rates on untrimmed boards prescribed for the future. *Chevrolet Motor Co., of Calif. v. Director General*, as Agent, 175..

Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Proposed adjustment of class rates between points in Kansas and points in Oklahoma; between points in Kansas and Oklahoma and points in Texas; between points in Texas, on the one hand, and points in Arkansas and in Louisiana, and Memphis, Tenn., Vicksburg and Natchez, Miss., on the other; and between points in Oklahoma on interstate traffic, to bring about a more harmonious adjustment in southwestern territory, found not justified. Suspended tariffs ordered canceled without prejudice to the filing of tariffs in conformity with findings in report. Extension of Memphis-Southwestern Scale, 596.

**CLEARING.** *See DOCKING AND CLEARING.***CLOSE OF BUSINESS.**

Refusal of carrier to accept certain shipments when tendered for transportation after close of business on day preceding effective date of increased rates, found not to have resulted in unreasonable or unlawful charges, and acceptance of occasional shipments from complainant after the closing hour found not to establish the existence of such a practice. *Transcontinental Freight Co. v. Director General*, as Agent, 127.

**CODE.**

Carriers reasonably may require shippers to properly mark their shipments and if shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose. *Viscosé Co. v. American Ry. Exp. Co.*, 32 (33-34).

**COMBINATION RATES.**

Legally applicable on wood-pulp board from Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., found not unreasonable due to the subsequent establishment of a lower proportional rate for the factor, Fresh Pond, N. Y., to Bushwick Station. *United Paperboard Co. (Inc.) v. M. C. R. R. Co.*, 43.

Contention that carriers misinterpreted and misapplied general order No. 28, by adding increases to each factor instead of but once to the combination rates, *Held*: Failure to strictly adhere to the terms of that order, the filing of which was not required by the federal control act, can not be construed as defeating the validity of rates filed by the President through his duly appointed agent, and since issue before the Commission is the justness and reasonableness of rates assailed, the manner in which they are arrived at is only one of the elements to be considered in determining that issue. *Acme Cement Plaster Co. v. Director General*, as Agent, 119.



**COMBINATION RATES—Continued.**

On lumber from certain points in the Carolinas and Virginia to Penns Grove, N. J., found illegal to extent they exceeded joint rate contemporaneously in effect. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 151.

Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. *Sligo Iron Store Co. v. W. M. Ry. Co.*, 643 (644).

Where, in the absence of through rates or a specific manner of constructing through rates, combination rates charged exceeded lower combinations of legally applicable interstate rates over route of movement, shipments found overcharged to extent that rates charged exceeded the lower combinations. Reparation awarded. *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 669 (674).

**COMMANDEERED VESSELS.**

Vessel on which space engaged commandeered by government while shipments in transit. While effort was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros v. Director General*, as Agent, 689.

**COMMERCIAL AND ECONOMIC CONDITIONS.**

It is not the Commission's duty to inquire into or adjust the relative advantages or disadvantages resulting from purely business or commercial conditions. *Hollingshead Co. v. Director General*, as Agent, 147 (150).

**COMMITTEES.**

Designation by parties of appropriate committees of qualified personnel to work jointly in revision of the divisions in New England, with report to the Commission at the end of specified periods, recommended. *New England Divisions*, 513 (566).

**COMMODITY RATES. See also CLASS AND COMMODITY RATES.**

Exception to the classification publishing rates as percentages of certain class rates does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Reasonableness of commodity rates is not dependent solely upon regularity of movement. *Swift & Co. v. Director General*, as Agent, 618 (623).

**COMMON CARRIERS.**

Incorporation is not a necessary incident to a common carrier status under the act, and conversely, the mere fact of incorporation can not transform a plant facility into a common carrier. *Wyandotte Terminal R. R. Co.* 1 (5).

It does not necessarily follow that all roads complying with the laws and regulations governing common carriers become common carriers by virtue of such compliance alone. *Id.* (5).

**COMMON CARRIERS—Continued.**

Chicago, North Shore & Milwaukee R. R., found to be a common carrier subject to the act, and in its interurban operations, both state and interstate, is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and this Commission. *Interstate Fares of the C., N. S. & M. R. R.*, 188 (193).

Allegheny & South Side Ry. Co., found not be a common carrier subject to the act. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248 (252).

Scottdale Connecting R. R. Co., found to be a plant facility of the United States Cast Iron Pipe & Foundry Co., and not a common carrier. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 339 (343).

The following short lines found to be common carriers subject to the act, and following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between them and their trunk line connections with respect to use and detention of foreign cars and basis for settlement of accrued charges, prescribed:

Benwood & Wheeling Connecting Ry. Co. *B. & W. C. Ry. Co. v. P., C., C. & St. L. R. R. Co.*, 357.

Genesee & Wyoming R. R. Co., 680.

Tionesta Valley Ry. Co., 473.

The following short lines found to be common carriers subject to the act which may lawfully participate in joint rates or have their charges on interstate traffic absorbed under appropriate tariff provisions by roads having the line haul:

Sheffield & Tionesta Ry. Co., 710.

Wyandotte Terminal R. R. Co., 1 (5).

**COMMUTATION FARES.**

Proposed increased single and commutation fares of the Washington-Virginia Ry. Co. an electric line, between points on its system and Washington, D. C., approved in part. *Fares of the Washington-Virginia Ry. Co.*, 200.

**COMPARATIVE RATES.**

Bars, cold-rolled steel: Combination rail-and-water rates on, from Beaver Falls, Pa., Cumberland, Md., and other points, to Galveston, Tex., via New York, N. Y., found unreasonable to extent that the water rate from New York exceeded the rate applied on merchant-steel bars. Measure of reasonable maximum rate prescribed and reparation awarded. *Texas Carnegie Steel Asso. v. Director General*, as Agent, 253.

Coke: Table showing rates on, from Seaboard, N. J., to representative destinations compared with rates from principal competing points or districts, together with revenue per ton-mile which those rates yield. Appendix A. *Seaboard By-Product Coke Co. v. Director General*, as Agent, 317 (319, 331-332).

Collars, steel horse: Any-quantity rate on a sporadic shipment of steel horse collars found not unreasonable as compared with rate on iron hames and cloth covered collars, of which there is a considerable c. l. movement. *Barrett & Zimmerman v. Director General*, as Agent, 629.

Fiber,istle: Fourth-class rate on, found unreasonable as compared with lower commodity rates on other commodities possessing analogous transportation characteristics, including cactus fiber, which is also used for cordage purposes. Reparation awarded on basis of commodity rate subsequently established. *Peoria Cordage Co. v. Director General*, as Agent, 137.

## COMPARATIVE RATES—Continued.

**Ingots:** Rate applicable on manufactured iron and steel articles found not to be a proper measure of the reasonableness of the rates on ingots, and the maintenance of commodity rates on castings lower than the class rates on ingots does not of itself establish that the latter are too high. *Pacific Coast Steel Co. v. Director General, as Agent*, 207.

**Kainit:** Rate on, found not unreasonable or otherwise unlawful as compared with lower rate on certain fertilizer materials. *Planters Fertilizer & Phosphate Co. v. Director General, as Agent*, 131.

**Machinery, sugar-making:** Class rates applicable on second-hand sugar-making machinery found not unreasonable as compared with lower commodity rates on mining machinery in the same general territory. Shipments were unusual or sporadic and were properly subject to the class-rate basis, and it was not shown that the classification rating was improper. *Gunnison Valley Sugar Co. v. D. & R. G. R. R. Co.*, 483.

**Shingles, cypress:** Rates on, found not unreasonable as compared with rates on pine and other roof coverings with which shingles come into competition. *Monroe Shingle Co. v. Director General, as Agent*, 714 (720).

**Starch, potato:** Rates on imported potato starch found unreasonable as compared with rates on the same or analogous commodities between other points in the same general territory for similar distances. Reparation awarded. *Nagase & Co. v. Director General, as Agent*, 422.

## COMPETITION.

## In General:

Ordinarily undue prejudice does not exist in the absence of competition. *Tidewater Oil Co. v. Director General, as Agent*, 226 (227).

Absence of, does not prevent a finding of unjust discrimination under section 2 of the act. *Id.* (227).

COMPONENT. *See* FACTOR.COMPRESSION IN TRANSIT. *See* TRANSIT ARRANGEMENTS.CONCENTRATION IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

## CONCURRENCE.

Where a mine is not actually upon the rails of a carrier and can not be considered as constructively upon the rails of that carrier under the terms of a trackage agreement, the publication of rates from that mine without the concurrence of the carrier upon whose rails it is situated is contrary to the Commission's tariff rules and should be discontinued. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (263-264).

Each factor of a combination rate increased under general order No. 28 of the Director General. but since that order provided for the application of but a specific single increase to the through rate and tariff of one of the participating carriers contained a rule to that effect, in which the remaining carriers concurred, shipment found overcharged and reparation awarded. *Sligo Iron Store Co. v. W. M. Ry. Co.*, 643.

Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. *Id.* (644).

**CONFERENCE RULINGS.**

Conference Ruling 119, quoted. Transit Privileges on Grain, 466 (467-468).

Conference Ruling 314, cited. American Smelting & Refining Co. v. Director General, as Agent, 583 (589).

**CONGESTION.**

That periods of, may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co, 228 (230).

Carriers' responsibility for the safety of freight stored upon right of way instead of in warehouses is not altered by fact that warehouses were congested. Dodge Bros. v. Director General, as Agent, 689 (691).

**CONSIGNEE.**

Reconsignment charge of \$2 per car for the substitution of the name of a new consignee for the old one in the records of the carrier at billed destination and involving no further movement of the car, found legally applicable and not unreasonable or otherwise unlawful. Detroit Produce Asso. v. Director General, as Agent, 283.

**CONSOLIDATED CLASSIFICATION.**

Fourth-class l. c. l. rating on common or laundry soap, soap powders, and washing, cleansing, and scouring compounds, moving into or within southern territory published in consolidated classification No. 1, found not unreasonable. The increase in rating was necessary and incident to the change in description made by eliminating value as the sole determinative of rating and by substituting a c. l. and l. c. l. basis for the any-quantity basis then observed in that classification so as to bring about identity of description in all classifications. Globe Soap Co. v. Director General, as Agent, 307.

Allegation that increased classification rating is illegal because filed with the Commission before January 1, 1920, without prior approval as then required by section 15, *Held*: Fifteenth section applications were not filed to cover consolidated classification No. 1, and no approval from the Commission under that section was necessary as to lines under federal control. *Id.* (311).

**CONSTRUCTION OF STATUTE.**

Under the provisions of paragraph 6, section 15, of the interstate commerce act as amended by the transportation act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition, even though such petition was filed subsequent to the taking effect of the amended act. Diamond Alkali Co. v. F., P. & E. R. R. Co., 161 (165).

• Carriers may not rely upon a technical construction of one portion of the act to justify a violation of another provision. Gillespie Coal Co. v. I. T. S., 335 (337-338).

A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15 of the act, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. New England Divisions, 513 (560).

## CONSTRUCTION OF STATUTE—Continued.

The Commission must be guided by the intent of Congress as expressed in the provisions of the present statute, and it is fundamental that it can act only under the jurisdiction conferred by Congress, exercising only such powers as it now has subject to any limitations which now attach to them. Id. (560).

Words "without regard to the mileage haul" in paragraph (6) of section 15 of the act, do not forbid consideration of element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other elements may outweigh element of distance, in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. Id. (561).

The Commission is bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for service performed in joint hauls under joint rates, fares, and charges. Its determination must be predicated upon a consideration of all the pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive. Id. (561).

The public interest does not demand nor does the statute either expressly or by reasonable implication provide that the Commission may prescribe increased divisions to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. Id. (562).

The Commission is authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite and any attempt to prescribe a blanket increase in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable would override the plain mandate of law. Id. (565).

The statutory provision for recapture of excess earnings from individual carriers clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management. Id. (565).

## CONSTRUCTIVE PLACEMENT.

Demurrage accruing after surrender of bills of lading on order-notify shipments constructively placed because of congestion at complainant's yard, due notice of which was furnished complainant, found to have been legally assessed. Individual cars were placed at particular points of unloading according to orders from complainant's foreman who failed to utilize the entire unloading capacity of the yard, evidenced by other cars standing on tracks in the immediate vicinity awaiting placement. *Alpiron v. Director General*, as Agent, 486 (488).

**CONTRACTS.** *See also* AGREEMENTS; TRACKAGE AGREEMENTS.

Under which a subsidiary to a proprietary industry acts as switching agent for carriers not shown to violate the act and the Commission is without power to abrogate such contracts or revise their terms. *Allegheny & South Side Ry. Co. v. Director General, as Agent*, 248 (252).

**COST OF SERVICE.**

There is no substantial difference between the cost of service from points on short-line connections not operated by trunk lines and that from points on branch lines. *Hollingshead Co. v. Director General, as Agent*, 147 (149).

**CREAM RATES.** *See* MILK AND CREAM RATES.**DAMAGES.**

Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. Commission's orders for reparation require payment of the sum found due and run against all defendants. *United Paperboard Co. (Inc.) v. S. Ry. Co.*, 60 (61).

In a stipulation of record entered into between the parties, by which a hearing was expressly waived, it was agreed that reparation should be awarded to basis found reasonable in a former decision involving similar shipments. *Du Pont de Nemours & Co. v. Director General*, 109.

Complainants have no right to expect an award of damages upon an issue which they have not attempted to raise in the manner prescribed by the Commission's liberal rules of procedure; and as to which defendant has not been apprized in the usual course. *Schlicher v. Director General*, 181 (185).

To secure an award of reparation for damages suffered as the result of undue prejudice, both the fact and amount of damages must be proved. *Id.* (185).

An award of damages by the Commission must be as certain and definite in law and fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. That basis would be wholly lacking if a controversy was determined upon an issue of law raised, not in the pleadings, but upon brief and argument; and if the fact was merely inferable from testimony received solely for another and a collateral purpose. *Id.* (185).

In an action for damages due to refusal of carrier to construct a siding and switch connection at complainant's mine while granting the same to complainant's vendee, *Held*: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not the proximate result of the carrier's unlawful conduct. *Id.* (135-186).

In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. *Id.* (186).

To obtain an award of damages complainant must prove that it has suffered actual pecuniary loss as a direct and proximate result of any alleged unjust discrimination or undue prejudice. *International Coal Co. Case*, 230 U. S., 184. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211 (216).

## DAMAGES—Continued.

Resulting from unlawful discrimination must be proved by the same sort of evidence as required in a court of law. The fact of damage can not be presumed from the existence of unjust discrimination or undue prejudice; nor is the amount that may have resulted therefrom necessarily measured by the difference in rates. Actual pecuniary damage and the amount thereof must be established with reasonable certainty by definite facts, without resort to conjecture, speculation, or unsupported opinion. *Kerr & Co. v. S. S. Ry. Co.*, 296 (299).

Complainants seeking reparation because of undue prejudice proceeded upon theory that they were damaged in amount measured by former differentials which they enjoyed under competing cities, notwithstanding assertion that competitors' prices were based upon lower production costs and that in meeting them they were compelled to shrink their profits, sometimes more than the amount of the differentials. *Held*: Theory contrary to binding rule in *International Coal Co. Case*, 230 U. S., 184, which requires affirmative proof of fact and amount of damage. *Id.* (302).

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object to receipt of such an affidavit further hearing may be requested regarding subject of reparation. *Phoenix Chamber of Commerce v. Director General*, as Agent, 412 (416); *Phoenix Chamber of Commerce v. S. P. Co.*, 500 (502); *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (725).

Upon further hearing, former reports 19 I. C. C., 333, and 35 I. C. C., 38, amounts of reparation fixed due to the exaction of unreasonable rates on shipments of yellow-pine lumber and lumber products from points in Louisiana to points in Nebraska and Kansas. *Louisiana Central Lumber Co. v. C., B. & Q. R. R. Co.*, 417.

Following *Riverside Mills*, 40 I. C. C., 501, where through rate, joint or combination, found unreasonable and reparation awarded, the order entered runs against the carriers, collectively, that participated in the transportation. *Id.* (419).

Director General expressed willingness to award reparation to basis of lower rates subsequently established but contended that reparation should not be awarded to a lower basis on shipments moving prior to June 25, 1918, as the causes which justified the increases made effective on that date existed prior thereto. *Held*: Extent to which the causes existed prior to June 25, 1918, but vaguely indicated and contention overlooks fact that a shipper is entitled to a reasonable rate. *Nagase & Co. v. Director General*, as Agent, 422 (425-426).

Upon supplemental report, preceding supplemental report, 60 I. C. C., 595, amount of reparation awarded to certain complainants on shipments of pig iron from points in Alabama and Tennessee to Ohio River crossings and points in c. f. a. territory, modified. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 646.

On further hearing, reparation denied due to undue prejudice found to exist in original report, 56 I. C. C., 293, as it was not shown that the prices of complainant's products were determined by competition; nor during period when they were fixed by the government, on cost of production of those competitors; nor that they were lower than they would have been if competitors had not enjoyed the preferential basis of rates. *Canton Chamber of Commerce v. P. Co.*, 726.

**DECLARED VALUE.** *See* VALUE.

**DELIVERY.** *See also* CONSTRUCTIVE PLACEMENT; SPOTTING CARS.

Lower rate was applicable in connection with all delivering lines other than that specified by shipper in bill of lading, but had shipments been routed over lines taking the lower rate they would have been re-routed by the Director General under general order No. 1 over delivering line specified by shipper to relieve congestion at destination. *Held:* Rate charged found unreasonable to extent it exceeded lower rate which was subsequently made applicable via route of movement. Reparation awarded. *Midwest Refining Co. v. Director General, as Agent, 135.*

**DEMURRAGE.** *See also* DETENTION.

Demurrage charges assessed on order-notify shipments found not unreasonable where cars were held pending receipt of other disposition orders and surrender of bills of lading and not for unloading on public team tracks, thus requiring an additional switching movement within the switching limits. Carrier was justified in declining to accept disposition orders until bills had been surrendered or other satisfactory assurance given as complainant's title depended upon possession of the bills of lading properly indorsed. *Alpirn v. Director General, as Agent, 486.*

Accruing after surrender of bills of lading on order-notify shipments constructively placed because of congestion at complainant's yard, due notice of which was furnished complainant, found to have been legally assessed. Individual cars were placed at particular points of unloading according to orders from complainant's foreman, who failed to utilize the entire unloading capacity of the yard, evidenced by other cars standing on tracks in the immediate vicinity awaiting placement. *Id. (488).*

Demurrage and average free time on export shipments moving to port of export under domestic bills of lading found not unreasonable. Cars arrived either too early or too late for vessels engaged due to negligence of governmental agencies in failing to cooperate in bringing them forward and obviate demurrage, but complainants were cognizant of procedure followed by those agencies and while cars were at the port they were under their full control and could have been reconsigned, sold locally, or disposed of in any other way. *American Smelting & Refining Co. v. Director General, as Agent, 583.*

Vessel on which space engaged commandeered by government while shipments in transit. While effort was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General, as Agent, 689.*

**DENSITY OF TRAFFIC.** *See* VOLUME OF TRAFFIC.

**DEPRESSED RATES.**

Director General canceled export rates on gasoline under general order No. 28 from Gainesville, Tex., to Louisiana ports, for export, leaving in effect higher domestic rates, but from Oklahoma producing points lower export rates, depressed by competition, were allowed to remain in effect. *Held:* Facts that Gainesville rate was subsequently reduced to the depressed basis or that complainant would have fared better had it enjoyed a similar export rate do not prove damage when the rate paid is not shown to be unreasonable. *Producers Refining Co. v. Director General, as Agent, 14.*



## DESCRIPTION.

Fourth-class l. c. l. rating on common or laundry soap, soap powders, and washing, cleansing, and scouring compounds, moving into or within southern territory, published in consolidated classification No. 1, found not unreasonable. The increase in rating was necessary and incident to the change in description made by eliminating value as the sole determinative of rating and by substituting a c. l. and l. c. l. basis for the any-quantity basis then observed in that classification so as to bring about identity of description in all classifications. *Globe Soap Co. v. Director General, as Agent, 307.*

## DESIRABILITY OF TRAFFIC.

From a transportation standpoint, soap is a desirable commodity, is conveniently loaded in the same car with other l. c. l. shipments, and loss and damage claims are negligible. *Globe Soap Co. v. Director General, as Agent, 307 (310).*

DETENTION. *See also DEMURRAGE.*

Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. *B. & W. C. Ry. Co. v. P., C., C. & St. L. R. R. Co., 357 (361); Tionesta Valley Ry. Co., 473 (478).*

## DIFFERENTIALS.

Rates on refined petroleum oils, in tank-car loads, from points in Kansas and Oklahoma to Rockford, Ill., found not unreasonable or unduly prejudicial as compared with rates to Chicago, Ill., and Milwaukee, Wis., but rate on crude, fuel, and gas oils, found unreasonable to extent it exceeded a rate 5 cents less than on refined oils. Reasonable rate prescribed and reparation awarded. *Emerson-Brantingham Co. v. Director General, as Agent, 18.*

Rate on pig iron from Wharton, N. J., to Seattle, Wash., for export, found not unreasonable, discriminatory, or unduly prejudicial because it exceeded a differential of 5 cents under the export rate on manufactured iron and steel articles. *Suzuki & Co. v. Director General, as Agent, 144.*

Combination rates on lumber from Sherman, Ky., a local point on the Big Sandy & Kentucky River Ry., to interstate destinations found not unreasonable or unduly prejudicial because in excess of 2 cents per 100 pounds over the rate from Dawkins, Ky., the junction point of that carrier with the C. & O. Ry., and while it appears that the Sherman to Dawkins factor of the through rate yielded somewhat high earnings, they are not exorbitant when consideration given to the fact that the distance is short and country traversed mountainous. *Burns & Knapp v. B. S. & K. R. Ry. Co., 345.*

Rates on mixed feed from Knoxville, Tenn., found not unreasonable; but as to points on and south of the Southern Ry. extending from Greensboro to Goldsboro, N. C., they are unduly prejudicial to extent they exceed on a distance basis the rates on like traffic from Nashville, Tenn., with a minimum differential of 4 cents lower than the latter rates, and to extent they exceed the lowest rate on like traffic from Memphis, Tenn., Louisville, Ky., or Cincinnati, Ohio; and as to points north of said Southern Ry., they are unduly prejudicial to extent they exceed the rates on like traffic from Nashville or Memphis. *Security Mills & Feed Co. v. Director General, as Agent, 657 (668).*

## DIFFERENTIALS—Continued.

Rates on poplar and gum logs from South Carolina points to certain destinations in North Carolina found unreasonable for single-line application to extent they exceed the scale of rates herein prescribed, and for joint-line application over two or more lines not more than 2.5 cents per 100 pounds should be added to such scale. Reasonable maximum rates prescribed and reparation awarded in instances where lower combinations existed over routes of movement, and where shipments were misrouted. *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 669.

Rates on coal from western Kentucky to points in southeastern Missouri and northeastern Arkansas, found unduly prejudicial to extent they exceed rates from southern Illinois group by more than 25 cents per ton, the differential established in *Ohio Valley Coal Operators' Asso.*, 53 I. C. C., 148, for hauls involving a difference in distance corresponding closely to those here involved. *West Kentucky Coal Bureau v. I. C. R. R. Co.*, 686.

Rates on sand and gravel from Lafayette, Ind., to certain points in Illinois found unreasonable and unduly prejudicial to extent they exceed the rates from Attica, Ind., to the same Illinois destinations by more than differentials stated in the report. Measure of reasonable and nonprejudicial rates prescribed for the future. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729.

Rates on coal from the Third Vein, Springfield, Belleville, and Fulton-Peoria districts of Illinois to the northwest found not unreasonable, but from the Third Vein, Springfield, and Belleville districts, to extent that they are less than 70 cents, 30 cents, and 10 cents per ton below the rates from the southern Illinois group, and from the Fulton-Peoria district to extent that they are less than 40 cents and 70 cents below the rates from the Springfield and southern Illinois districts, found unduly prejudicial. *Illinois Coal Cases*, 1920, 741 (750, 751-752).

Rates on coal from points in the so-called inner group of mines in Illinois to St. Louis, Mo., and from the Belleville district to points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, found not unreasonable but unduly prejudicial to extent that they are less than 22.5 cents per ton lower than the rates from mines in the southern Illinois group. *Id.* (754-755, 756-757).

Interstate rates on bituminous coal from mines west of Pittsburgh, Pa., in the states of Pennsylvania and West Virginia, on the Pittsburgh & West Virginia Ry., to points north and east thereof, found not unreasonable but unduly prejudicial to extent they exceed by more than 10 cents per net ton the rates from other mines situated on other carriers in the vicinity of Pittsburgh. *Duquesne Coal & Coke Co. v. P. & W. V. Ry. Co.*, 759.

**DIRECTOR GENERAL. See FEDERAL CONTROL DISCRETION.**

A railroad must be allowed some latitude for the exercise of business judgment and discretion in determining the scope of its operations, having due regard for the provisions of the act. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261).

**DISCRIMINATION.** *See also* PREFERENCES AND PREJUDICES; SECTION 2.

Charges for transportation of passengers in sleeping and parlor cars required by state authority to be maintained in the state of Alabama, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Surcharge for Sleeping Car Service in Alabama, 153.

Intrastate passenger fares of the Chicago, North Shore & Milwaukee R. R., an electric line, between points in Illinois, lower than the corresponding interstate fares between points in Illinois and points in Wisconsin, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Intrastate Fares of the C., N. S. & M. R. R., 188.

While absence of competition does not prevent a finding of unjust discrimination under section 2, to sustain such a finding it must appear that the transportation services are like and contemporaneous and are performed under substantially similar circumstances and conditions, and that the property transported is like traffic. But it is the line haul to which section 2 primarily relates, and if the movement is either over a different line or, if over the same line, for a substantially different haul, the transportation service is substantially dissimilar. *Tidewater Oil Co. v. Director General*, as Agent, 226 (227).

Potato starch and potato flour found to be like kinds of traffic within the meaning of section 2 of the act, and rates on potato starch found unjustly discriminatory to extent they exceeded the rates between the same points on potato flour. *Nagase & Co. v. Director General*, as Agent, 422 (424).

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges*, 440.

Upon further hearing, original report, 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas found so related that disturbance of that relation would contravene the act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. *Intrastate Rates within the State of Texas*, 591.

**DISPARITY OF RATES.**

The disparity between the rates on blackstrap molasses, in tank-car loads, from New Orleans, La., Mobile, Ala., and Savannah, Ga., to Knoxville, Tenn., and those to Nashville, Tenn., and other competing points, found to result in undue prejudice to Knoxville. Reparation denied. *Security Mills & Feed Co. v. Director General*, as Agent, 405 (410).

Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on millwork from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in 62 I. C. C.

**DISPARITY OF RATES—Continued.**

rates between these points of origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

**DISTANCE.** *See also* **SHORT LINE DISTANCE.**

When distances of over 500 miles are involved the fact that the service is by two lines is largely negligible. *Hollingshead Co. v. Director General*, as Agent, 147 (149).

**DISTANCE RATES.**

Class rates on gravel from Benton, Ark., to Shreveport, La., found unreasonable to extent they exceeded rates for similar distances prescribed in the *Shreveport Case*, 48 I. C. C., 312, 351, as subsequently increased under general order No. 28. Measure of reasonable maximum rates prescribed and reparation awarded. *Shreveport Producing & Refining Corp. v. Director General*, as Agent, 123.

Rates on hogs, in single and double-deck cars, from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., to North Fort Worth, Tex., found unreasonable to extent that the rates from Kansas City and South St. Joseph, Mo., exceeded the distance scale of rates on live stock initiated by the Director General on January 20, 1919, based on the Shreveport scale and subject to increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. Reparation awarded and reasonable rates prescribed for the future. *Swift & Co. v. Director General*, as Agent, 166.

Rates on beef cattle and hogs from Kansas City, Mo.-Kans., and on hogs from Sioux Falls, S. Dak., to Oklahoma City, Okla., found unreasonable to extent they exceeded the distance rates initiated by the Director General on January 20, 1919, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. Reparation awarded and reasonable rates prescribed for the future. *Wilson & Co. v. Director General*, as Agent, 171.

Rates on coke from Seaboard, N. J., to points in New England, New York, and New Jersey via all-rail routes, found unreasonable and unduly prejudicial to extent they exceeded 80 per cent of the maximum distance scale herein prescribed for the future. Reparation awarded. *Seaboard By-Product Coke Co. v. Director General*, as Agent, 317 (326, 330).

Proposed adjustment of class rates between points in Kansas and points in Oklahoma; between points in Kansas and Oklahoma and points in Texas; between points in Texas, on the one hand, and points in Arkansas and in Louisiana, and Memphis, Tenn., Vicksburg and Natchez, Miss., on the other; and between points in Oklahoma on interstate traffic, to bring about a more harmonious adjustment in southwestern territory, found not justified. *Extension of Memphis-Southwestern Scale*, 596.

Rates on poplar and gum logs from South Carolina points to certain destinations in North Carolina found unreasonable for single-line application to extent they exceed the scale of rates herein prescribed, and for joint-line application over two or more lines not more than 2.5 cents per 100 pounds should be added to such scale. Reasonable maximum rates prescribed and reparation awarded in instances where lower combinations existed over routes of movement, and where shipments were misrouted. *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 669.

## DISTANCE RATES—Continued.

Rates applicable on ice from Carthage and Joplin, Mo., to Oklahoma City, Okla., found unreasonable to extent they exceed rates based on a distance scale of commodity rates contemporaneously in effect between points in Kansas and Missouri on the one hand and points in Oklahoma on the other. Reasonable maximum rate prescribed and reparation awarded. *Capital Ice & Storage Co. v. St. L.-S. F. Ry. Co.*, 677.

## DISTURBANCE OF ADJUSTMENT.

Rates on crude petroleum in tank-car loads from the Burkburnett and Ranger districts, in Texas, and the Shreveport district in Louisiana, to Oklahoma City, Okla., were the same as the rates to Cushing, Okmulgee, Sapulpa, and Tulsa, Okla. Following rate adjustment higher rates became effective to Oklahoma City, which were subsequently reduced. *Held*: Rates charged during interim not found unreasonable, and complainant not shown damaged by alleged undue prejudice. *Choate Oil Corp. v. Director General*, as Agent, 93.

Rates on iron ore from producing points in Wisconsin and Michigan to Granite City, Ill.; increased out of proportion to the increases to Pittsburgh, Pa., and Ironton, Ohio, following *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable. Reparation awarded and reasonable maximum rates prescribed. *St. Louis Coke & Chemical Co. v. A. & S. R. R. Co.*, 194.

Upon further hearing, original report 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas found so related that disturbance of that relation would contravene the act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. Intrastate Rates within the State of Texas, 591.

## DIVERSION. See RECONSIGNMENT.

## DIVISIONS.

Upon further hearing, original report 53 I. C. C., 549, just, reasonable, and equitable divisions to be accorded the Fairport, Painesville & Eastern R. R. Co., out of joint interstate rates to and from Alkali, Ohio, prescribed for the future and adjustment required from date of filing of petition. *Diamond Alkali Co. v. F., P. & E. R. R. Co.*, 161.

Under the provisions of paragraph 6, section 15, of the interstate commerce act as amended by the transportation act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition. *Id.* (165).

Upon complaint that divisions of joint rates between points on the lines of defendants and points on the lines of carriers in New England were and are violative of certain provisions of the act, *Held*: No basis afforded for a valid prescription of such divisions, but it is shown that just, fair, and equitable divisions can not flow from existing arrangements. Record held open for submission of proposed readjustment. *New England Divisions*, 513.

With respect to divisions accruing to carriers out of joint rates with Canadian connections, the Commission's jurisdiction inheres only in so far as the transportation takes place within the United States. *Id.* (516).

## DIVISIONS—Continued.

Per diem has never been a factor specifically taken into account in the determination of divisions. If so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under joint rates. Id. (538).

While manufacture and production of commodities in general in a particular section of the country has a most important bearing in a rate case, the Commission's function in a divisional case has been considered to be an equitable, just, and reasonable apportionment of earnings derived from the carriage of a particular commodity as between the carriers participating in the transportation. Id. (539).

If a particular traffic must bear its proper and proportionate share of operating costs and only earn its due proportion of the total earnings of a particular carrier, it would be inequitable to increase the divisions of a carrier having a large percentage of l. c. l. traffic because another carrier with which it participated in the transportation received the major portion of its earnings from some particular commodity moving in greater volume. Id. (540).

Short-haul l. c. l. traffic is generally conceded to be unremunerative but it can not be said that because complainants originate a larger percentage of l. c. l. traffic than defendants, that fact should be given weight in determining that the divisions of complainants "as a whole" are unjust. Id. (540).

A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15 of the act, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. Id. (560).

Under paragraph (6), section 15 of the act, the Commission is authorized to prescribe just, reasonable, and equitable divisions. The Commission's jurisdiction attaches irrespective of the manner in which divisions theretofore prevailing were established, its duty to prescribe arising when, after full hearing, it is of opinion that the divisions brought in issue "are or will be unjust, unreasonable, inequitable, or unduly prejudicial or preferential as between the carriers parties thereto." Id. (560-561).

Elements to which the Commission is required to give due consideration in prescribing and determining divisions of joint rates, outlined. Id. (561).

Under the provisions of section 15, no one of the elements which the Commission is required to consider is predominant; all are to be considered *per se* and relatively in the determination of just, reasonable, and equitable divisions, "to be received by the several carriers." Id. (561).

Words "without regard to the mileage haul" in paragraph (6), section 15 of the act, do not forbid consideration of the element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. Id. (561).

## DIVISIONS—Continued.

The Commission is bound under the statute to determine whether divisions properly in issue, justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for the service performed in joint hauls under joint rates, fares, and charges. Its determination must be predicated upon a consideration of all the pertinent factors, including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive. *Id.* (561).

The public interest does not demand nor does the statute either expressly or by reasonable implication provide that the Commission may prescribe increased divisions to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. *Id.* (562).

The Commission is not vested with discretion by virtue of which the mandate of section 1, paragraph (4), of the act, that divisions as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable, might be made ineffective by administrative or judicial action. *Id.* (562).

The remedial provisions of paragraph (6), section 15, of the act, offer to carriers a source of relief to which they may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable." *Id.* (562).

The age of divisions affords no presumption that they are unreasonable; it may be that they were too liberal originally. *Id.* (563).

The Commission is authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite, and any attempt to prescribe a blanket increase as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable would override the plain mandate of law. *Id.* (565).

While the Commission is urged to adjust the divisions in New England "as a whole" some of the roads in that territory have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to authorize the Commission to do. *Id.* (565).

A plan of divisional arrangements, which is the antithesis of equality, uniformity, system, or order, so fraught with incongruities from which anything might be proved by a judicious selection of items, is indefensible. *Id.* (565).

## DOCKING AND CLEARING.

Water craft are operated under conditions which make it impossible to predict at all times the precise date of docking and clearing, and rail carriers can not be held responsible therefor. *American Smelting & Refining Co. v. Director General*, as Agent, 583 (588).

DOMESTIC RATES. *See* EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.  
DOUBLE INCREASE.

Each component of combination rate increased on June 25, 1918, under general order No. 28 of the Director General. Contention that through charges should not have been greater than had increases been computed upon the combination rates as a whole rather than upon each factor, *Held*: So-called double increase does not of itself warrant a finding that the total rates were unreasonable. *National Fireproofing Co. v. Director General*, as Agent, 49 (53).

Contention that carriers misinterpreted and misapplied general order No. 28, by adding increases to each factor instead of but once to the combination rates, *Held*: Failure to strictly adhere to the terms of that order, the filing of which was not required by the federal control act, can not be construed as defeating the validity of rates filed by the President through his duly appointed agent, and since issue before the Commission is the justness and reasonableness of rates assailed, the manner in which they are arrived at is only one of the elements to be considered in determining that issue. *Acme Cement Plaster Co. v. Director General*, as Agent, 119.

Contention that increases authorized by general order No. 28 should have been applied to the through combinations and not to each factor separately, *Held*: Without determining whether or not that order was strictly complied with, the lack of such compliance does not establish unreasonableness of the rates affected. *Woodbury Lumber Co. v. Director General*, as Agent, 293.

Combination rates on cement from Sellersburg, Ind., to points in Kentucky and Tennessee, both factors of which were increased by the Director General under general order No. 28, found unreasonable as compared with rates from Kosmosdale, Ky., and Mitchell, Ind., competing points. Reparation awarded on basis of rate subsequently established by addition of a single increase to the through rate. *Louisville Cement Co. v. Director General*, as Agent, 362.

Complainant offered no evidence other than the contention that rates charged were unreasonable because of fact that increases applied by the Director General on June 25, 1918, were added to the separate factors previously in effect instead of but once to the combinations. *Held*: Rates charged found not unreasonable, as they compare favorably with other rates on like traffic in the same territory. *Tum-A-Lum Lumber Co. v. Director General*, as Agent, 491.

Combination rates on bituminous coal from Jenkins and McRoberts, Ky., to Cedar Rapids, Iowa, both factors of which were increased following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General, found not unreasonable when measured by ton-mile earnings, and by the bulk of coal rates in evidence. *Cedar Rapids Gas Co. v. Director General*, as Agent, 636.

Each factor of combination rate increased under general order No. 28 of the Director General, but since that order provided for the application of but a specific single increase to the through rate and tariff of one of the participating carriers contained a rule to that effect, in which the remaining carriers concurred, shipment found overcharged and reparation awarded. *Sligo Iron Store Co. v. W. M. Ry. Co.*, 643.



**DOUBLE INCREASE—Continued.**

Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. *Id.* (644).

**DUTY OF COMMISSION.**

It is not the Commission's duty to inquire into or adjust the relative advantages or disadvantages resulting from purely business or commercial conditions. *Hollingshead Co. v. Director General*, as Agent, 147 (150).

The Commission is bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for the service performed in joint hauls under joint rates, fares, and charges. Its determination must be predicated upon a consideration of all the pertinent factors, including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive. *New England Divisions*, 513 (561).

**DUTY OF SHIPPER.**

Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *Rumble & Wensel Co. v. Director General*, as Agent, 110 (111).

A shipper is presumed to know the rates and applicable provisions of carriers' published tariffs. *Chicago & Alton R. R. Co. v. Kirby*, 225 U. S., 155. *Cairo Asso. of Commerce v. Director General*, as Agent, 701 (703).

**EARNINGS. See also RECAPTURE OF EXCESS EARNINGS; TON-MILE REVENUE.**

One factor of a combination rate yielding somewhat high earnings found not exorbitant when consideration given to the fact that the distance was short and the country traversed mountainous. *Burns & Knapp v. B. S. & K. R. Ry. Co.*, 345 (347).

The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings on all traffic. If this were true the inevitable result would be to bring all rates to a common level. *Swift & Co. v. Director General*, as Agent, 618 (625).

Upon consideration of the ton-mile and car-mile earnings, rates on mill-work from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in rates between these points or origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

**ECONOMIC CONDITIONS. See COMMERCIAL AND ECONOMIC CONDITIONS. ECONOMY.**

Greater economies have been made in train operation than in terminal service. *New England Divisions*, 513 (564).

**EFFICIENCY.**

Proposed reduction in minimum weight on sugar from points in Colorado territory to various destinations, found not justified. The provisions of section 15a of the act as to efficient and economical management should be kept constantly in mind; the proposal seems inconsistent with the general campaign for increased carloading and efficiency; and to permit the reduction from Colorado territory without a corresponding reduction from other producing points would place the latter at a disadvantage. Carload Minimum Weight on Sugar, 510.

Upon complaint seeking establishment of just, reasonable, and equitable divisions of joint rates for carriers in New England "the efficiency with which carriers concerned are operated" found impossible of determination, comprehending, as it does, all common carriers in the United States subject to the Commission's jurisdiction. New England Divisions, 513 (516).

**ELECTRIC LINE.**

Intrastate passenger fares of the Chicago, North Shore & Milwaukee between points in Illinois, lower than the corresponding interstate fares between points in Illinois and points in Wisconsin, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Intrastate Fares of the C., N. S. & M. R. R., 188.

Chicago, North Shore & Milwaukee R. R. found to be a common carrier subject to the act, and in its interurban operations, both state and interstate, is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and this Commission. *Id.* (193).

Proposed increased single and commutation fares of the Washington-Virginia Ry. Co., between points on its system and Washington, D. C., approved in part. Fares of the Washington-Virginia Ry. Co., 200.

Intrastate rates, fares, and charges of the Joplin & Pittsburgh Ry. Co., required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. Kansas Rates, Fares, and Charges, 440.

**EMERGENCY.**

In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed such rules and charges were promptly cancelled. *Held*: Establishment thereof was fully justified even though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. Omaha Chamber of Commerce v. C., B. & Q. R. R. Co., 655.

**EMERGENCY SHIPMENT.** See SPORADIC MOVEMENT.

**EMINENT DOMAIN.**

Sheffield & Tionesta Ry. Co. has exercised the power of eminent domain. Sheffield & Tionesta Ry. Co., 710 (712).

**EQUALITY IN TREATMENT.**

The equality in treatment among shippers which the law requires of a carrier extends only to shippers whom it is under a duty to serve. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261).

**ERROR.**

Local rates to and from concentrating point, assessed on shipments of cotton found not unreasonable, discriminatory, or unduly prejudicial where complainant failed to comply with tariff requirement which provided for surrender of inbound freight bills in order to obtain the benefit of through rate from point of origin to ultimate destination. *Rumble & Wensel Co. v. Director General*, as Agent, 110.

Proof of error in the publication of rates does not justify a departure from the published rates, and the intention of tariff framers is not controlling. *Seaboard By-Product Coke Co. v. Director General*, as Agent, 317 (329).

Proposed modification of rule governing rates to be applied on grain accorded transit at Chicago district stop-over points, by eliminating the words "or rate basing point" included in present tariffs as a result of error in compilation, found justified. *Transit Privileges on Grain*, 466.

Factor of combination rate on fluorspar, increased under general order No. 28 and subsequently reduced under assumption that increase of 1 cent should have been applied instead of 25 per cent, found not unreasonable, as the reduction was an error which was later corrected when the rate was again increased. *Aluminum Ore Co. v. Director General*, as Agent, 498.

**EVIDENCE. See also PROOF.**

Judicial bodies with unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the cause, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. It is manifest any other rule would result in surprise and injustice. *Schlicher v. Director General*, 181 (185).

**EXCEPTIONS.**

Rates on intrastate shipments of silicate of soda moving during federal control found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Boldt Paper Mills v. Director General*, as Agent, 471.

Exception to classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Id.* (472).

**EXCESS BAGGAGE. See BAGGAGE.****EXCESS EARNINGS.**

The statutory provision for recapture of excess earnings from individual carriers clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management. *New England Divisions*, 513 (565).

**EXPORT AND DOMESTIC.**

Director General cancelled export rates on gasoline under general order No. 28 from Gainesville, Tex., to Louisiana ports, for export, leaving in effect higher domestic rates, but from Oklahoma producing points lower export rates, depressed by competition, were allowed to remain in effect. *Held*: Facts that Gainesville rate was subsequently reduced to the depressed basis or that complainant would have fared better had it enjoyed a similar export rate, do not prove damage when the rate paid is not shown to be unreasonable. *Producers Refining Co. v. Director General, as Agent, 14.*

Domestic commodity rate on carbon black, in bags, assessed as a result of the cancellation of all export rates under general order No. 28 of the Director General, and which represented an increase in excess of 25 per cent, not found unreasonable. *Ault & Wiborg Co. v. Director General, as Agent, 133.*

Domestic rate applicable on lubricating oil and paraffin wax from Port Arthur, Tex., to Galveston, Tex., for export, assessed as a result of the cancellation by the Director General of all export rates under general order No. 28, found unreasonable as compared with contemporaneous rates for greater distances, and to extent it exceeded lower export rate subsequently established. Reparation awarded. *Texas Co. v. Director General, as Agent, 489.*

**EXPORT BILL OF LADING.**

So-called through export bills of lading are in fact two distinct contracts, one on the part of the railroads for the carriage to the port and other on the part of the ocean line for the carriage from the port. *Dodge Bros. v. Director General, as Agent, 689 (691).*

**EXPORT SHIPMENT.**

Rate on pig iron from Wharton, N. J., to Seattle, Wash., for export, found not unreasonable, discriminatory, or unduly prejudicial because it exceeded a differential of 5 cents under the export rate on manufactured iron and steel articles. *Suzuki & Co. v. Director General, as Agent, 144.*

Demurrage and average free time on export shipments moving to port of export under domestic bills of lading found not unreasonable. Cars arrived either too early or too late for vessels engaged due to negligence of governmental agencies in failing to cooperate in bringing them forward and obviate demurrage, but complainants were cognizant of procedure followed by these agencies, and while cars were at the port they were under their full control and could have been reconsigned, sold locally, or disposed of in any other way. *American Smelting & Refining Co. v. Director General, as Agent, 583.*

Vessel on which space engaged commandeered by government while shipments in transit. While effort was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General, as Agent, 689.*

**EXTENSION OF LINE.**

The service of mines by a carrier under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. *Ridge Coal Mining Co. v. M. P. R. R. Co., 259 (261).*

**EXTENSION OF LINE—Continued.**

Under paragraph 21 of section 1 of the act the Commission may require a carrier to extend its line only when the extension is reasonably required in the interest of public convenience or when the expense involved will not impair the ability of the carrier to perform its duty to the public. *Id.* (261-262).

**FACTOR.**

Combination rate legally applicable on wood pulpboard from Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., found not unreasonable due to the subsequent establishment of a lower proportional rate for the factor, Fresh Pond, N. Y., to Bushwick Station. *United Paperboard Co. (Inc.) v. M. C. R. R. Co.*, 43.

Rates on hogs, in single and double deck cars, from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., to North Fort Worth, Tex., found unreasonable to extent that the rates from Kansas City and South St. Joseph, exceeded the distance scale of rates on live stock initiated by the Director General on January 20, 1919, based on the Shreveport scale subject to increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. Reparation awarded and reasonable rates prescribed for the future. *Swift & Co. v. Director General*, as Agent, 166.

Combination rail-and-water rates on cold-rolled steel bars from Beaver Falls, Pa., Cumberland, Md., and other points, to Galveston, Tex., via New York, N. Y., found unreasonable to extent that the water rate from New York exceeded the rate on merchant-steel bars. Measure of reasonable maximum rate prescribed and reparation awarded. *Texas Carnegie Steel Asso. v. Director General*, as Agent, 253.

One factor of a combination rate yielding somewhat high earnings found not exorbitant when consideration given to the fact that the distance was short and the country traversed mountainous. *Burns & Knapp, v. B. S. & K. R. Ry. Co.*, 345 (347).

Factor of combination rate on fluorspar, increased under general order No. 28 and subsequently reduced under assumption that increase of 1 cent should have been applied instead of 25 per cent, found not unreasonable, as the reduction was an error which was later corrected when the rate was again increased. *Aluminum Ore Co. v. Director General*, as Agent, 498.

In determining whether rates are unreasonable, consideration can not be confined to one component. The through charge must be examined. *Cairo Asso. of Commerce v. Director General*, as Agent, 701 (702).

**FARES.** *See* COMMUTATION FARES; PASSENGER FARES.

**FEDERAL CONTROL.**

Director General cancelled export rates on gasoline under general order No. 28 from Gainesville, Tex., to Louisiana ports, for export, leaving in effect higher domestic rates, but from Oklahoma producing points lower export rates, depressed by competition, were allowed to remain in effect. *Held*: Facts that Gainesville rate was subsequently reduced to the depressed basis or that complainant would have fared better had it enjoyed a similar export rate, do not prove damage when the rate paid is not shown to be unreasonable. *Producers Refining Co. v. Director General*, as Agent, 14.

**FEDERAL CONTROL—Continued.**

Contention that as the supplement to general order No. 28, issued June 12, 1918, published specific increases on coal authorized by the general order, but not the rule concerning the disposition of fractions, such rates were excepted from the application of that rule. *Held*: Not sustained by the provisions of the supplement, and if it were, the fact would not be controlling. *Tallulah Cotton Oil Co. v. Director General*, as Agent, 41.

Each component of combination rate increased on June 25, 1918, under general order No. 28 of the Director General. Contention that through charges should not have been greater than had increases been computed upon the combination rates as a whole rather than upon each factor. *Held*: So-called double increase does not of itself warrant a finding that the total rates were unreasonable. *National Fireproofing Co. v. Director General*, as Agent, 49 (53).

Minimum charge of \$15 per car under general order No. 28, assessed on shavings and sawmill refuse from Wausau, Wis., to Brokaw and Rothschild, Wis., moving during federal control, found unreasonable to extent it exceeded charges contemporaneously in effect at rates per 100 pounds. Reparation awarded. *Wausau Box & Lumber Co. v. Director General*, as Agent, 56.

Following *Meridian Traffic Bureau*, 60 I. C. C., 549, domestic rates assessed on imported blackstrap molasses, in tank-car loads, from Mobile, Ala., and New Orleans, La., to Memphis, Tenn., due to the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable. *Memphis Merchants Exchange v. Director General*, as Agent, 86.

Minimum charge of \$15 per car under general order No. 28, plus additional charges for special train service, assessed on intrastate shipments of water, in tank-car loads, moving during federal control between points in Indiana, found unreasonable to extent they exceeded \$9 per car for distances of 15 miles and less and \$11.50 per car for distances in excess of 15 miles, with no additional charge for extra train service, prescribed in *Illinois Coal Traffic Bureau*, 56 I. C. C., 426. Reparation awarded. *Rowland Power Consolidated Collieries Co. v. Director General*, as Agent, 101.

Contention that carriers misinterpreted and misapplied general order No. 28, by adding increases to each factor instead of but once to the combination rates. *Held*: Failure to strictly adhere to the terms of that order, the filing of which was not required by the federal control act, can not be construed as defeating the validity of rates filed by the President through his duly appointed agent, and since issue before the Commission is the justness and reasonableness of rates assailed, the manner in which they are arrived at is only one of the elements to be considered in determining that issue. *Acme Cement Plaster Co. v. Director General*, as Agent, 119.

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control. *D'Arcy Spring Co. v. Director General*, as Agent, 129.

## FEDERAL CONTROL—Continued.

Domestic commodity rate on carbon black, in bags, assessed as a result of the cancellation of all export rates under general order No. 28 of the Director General, and which represented an increase in excess of 25 per cent, not found unreasonable. *Ault & Wiborg Co. v. Director General*, as Agent, 183.

The percentage of increase under general order No. 28 is not controlling if the resulting rates are reasonable. *Id.* (184).

Lower rate was applicable in connection with all delivering lines other than that specified by shipper in bill of lading, but had shipments been routed over lines taking the lower rate, they would have been re-routed by the Director General under general order No. 1 over delivering line specified by shipper to relieve congestion at destination. *Held*: Rate charged found unreasonable to extent it exceeded lower rate which was subsequently made applicable via route of movement. Reparation awarded. *Midwest Refining Co. v. Director General*, as Agent, 185.

Minimum charge of \$15 per car assessed on intrastate shipments of clay found unreasonable to extent it exceeded charges based on rate and actual weight of shipments, not subject to the minimum charge. Commodity was of low grade, movements were regular and for short distances, and the physical condition of defendant's road would not permit the handling of cars sufficiently loaded to produce the minimum charge. Reparation awarded. *Dickey v. Director General*, as Agent, 228.

At the time of the adoption of Circular CS-31, governing method for ordering cars for mines, no consideration was given to the length of time the rules were to be made operative, although the fact that the roads were being operated as a unit under federal control was a prime reason for the adoption. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (274).

Charges for switching ground limestone during federal control, between plants within the city of Alton, Ill., increased under general order No. 28 and subsequently reduced. *Held*: Higher rate charged on shipments moving during interim found legally applicable and even if established in error, as contended by complainant, since no evidence offered to show that it was unreasonable, complaint dismissed. *Illinois Glass Co. v. Director General*, as Agent, 287.

Contention that increases authorized by general order No. 28 should have been applied to the through combinations and not to each factor separately, *Held*: Without determining whether or not that order was strictly complied with, the lack of such compliance does not establish unreasonableness of the rates affected. *Woodbury Lumber Co. v. Director General*, as Agent, 293.

Rates on petroleum products moving during federal control from Joplin, Mo., to destinations in the same state, as increased on June 25, 1918, under general order No. 28 and subsequently readjusted by substitution of a flat increase of 4.5 cents in lieu of 25 per cent, found not unreasonable. *Wilhoit Oil Co. v. Director General*, as Agent, 313.

Intraplant switching charges on shipments of coke moving during federal control from coke ovens to various points within the area of complainant's plant at Gary, Ind., found unreasonable where volume of movement was regular and heavy, the distance short, the service performed by engines and crews constantly on duty, and the charges were in excess of

**FEDERAL CONTROL—Continued.**

other charges for similar services in the same general territory. Reparation awarded on basis of lower charges subsequently established. *Illinois Steel Co. v. Director General*, as Agent, 849.

Combination rates on cement from Sellersburg, Ind., to points in Kentucky and Tennessee, both factors of which were increased by the Director General under general order No. 28, found unreasonable as compared with rates from Kosmosdale, Ky., and Mitchell, Ind., competing points. Reparation awarded on basis of rate subsequently established by addition of a single increase to the through rate. *Louisville Cement Co. v. Director General*, as Agent, 862.

The reasonableness of rates can not be determined by a construction of general order No. 28. *Id.* (864).

Director General expressed willingness to award reparation to basis of lower rates subsequently established but contended that reparation should not be awarded to a lower basis on shipments moving prior to June 25, 1918, as the causes which justified the increases made effective on that date existed prior thereto. *Held*: Extent to which the causes existed prior to June 25, 1918, but vaguely indicated and contention overlooks fact that a shipper is entitled to a reasonable rate. *Nagase & Co. v. Director General*, as Agent, 422 (425-426).

Minimum charge on milk and cream, established by the Director General on June 25, 1918, was subsequently cancelled, leaving no minimum in effect. Rates assessed on shipments moving during interim found unreasonable to extent they exceeded rates contemporaneously applicable not subject to such minimum charge. Reparation awarded. *Wanser & Sons v. M., St. P. & S. S. M. Ry. Co.*, 427.

Fact that in the great majority of instances rates were increased only 25 per cent under general order No. 28, while rate charged represented an increase exceeding 25 per cent of the rate previously in effect, does not afford a basis for a finding of unreasonableness. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

Rate on crude petroleum from Junction City, Okla., to Lawton, Okla., during federal control, increased at various times by the Director General, found unreasonable as compared with rates to or from other refining points for longer distances. Reparation awarded on basis of lower rate subsequently established in connection with a general revision of rates on crude petroleum in the midcontinent field. *Lawton Refining Co. v. Director General*, as Agent, 480.

Domestic rate applicable on lubricating oil and paraffin wax from Port Arthur, Tex., to Galveston, Tex., for export, assessed as a result of the cancellation by the Director General of all export rates under general order No. 28, found unreasonable as compared with contemporaneous rates for greater distances, and to extent it exceeded lower export rate subsequently established. Reparation awarded. *Texas Co. v. Director General*, as Agent, 489.

Complainant offered no evidence other than the contention that rates charged were unreasonable because the increases applied by the Director General on June 25, 1918, were added to the separate factors previously in effect instead of but once to the combinations. *Held*: Rates charged found not unreasonable as they compare favorably with other rates on like traffic in the same territory. *Tum-A-Lum Lumber Co. v. Director General*, as Agent, 491.



## FEDERAL CONTROL—Continued.

Following *Atlantic Refining Co.*, 58 I. C. C., 46, rate on crude petroleum from Drace, Okla., to Sapulpa, Okla., during federal control, increased at various times by the Director General, and subsequently reduced, found not unreasonable as the fluctuations were due to a general readjustment of rates on petroleum and its products throughout the entire country. *Sapulpa Refining Co. v. Director General*, as Agent, 493.

Factor of combination rate on fluorspar, increased under general order No. 28 and subsequently reduced under assumption that increase of 1 cent should have been applied instead of 25 per cent, found not unreasonable, as the reduction was an error which was later corrected when the rate was again increased. *Aluminum Ore Co. v. Director General*, as Agent, 498.

Under section 206 (f) of the transportation act, 1920, the period of federal control is not to be computed as part of the period of limitation in claims for reparation for causes of action arising prior thereto, and a complaint filed during federal control based on causes of action which arose within two years prior thereto are not barred by the statute. *Pittsburgh Grain & Hay Exchange v. Director General*, as Agent, 506 (508).

The lawfulness of rates can not be determined entirely by a construction of general order No. 28. *Cedar Rapids Gas Co. v. Director General*, as Agent, 636 (641).

Each factor of a combination rate increased under general order No. 28 of the Director General, but since that order provided for the application of but a specific single increase to the through rate and tariff of one of the participating carriers contained a rule to that effect, in which the remaining carriers concurred, shipment found overcharged and reparation awarded. *Sligo Iron Store Co. v. W. M. Ry. Co.*, 643.

Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. *Id.* (644).

Excluding period of federal control as part of the period of limitation in claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, complaint found to have been filed within two years and within the Commission's jurisdiction. *San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co.*, 675.

Contention that shipments were detained at port as result of action of government in commandeering vessels on which space engaged, and that no demurrage should have been assessed during time when the lines of defendant carriers were being operated by a federal agency, not sustained, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General*, as Agent, 690 (690-691).

## FILING AND POSTING.

The Commission has not required that car service rules be filed as tariff schedules. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (276).

**FILING AND POSTING—Continued.**

While the Commission did not direct that certain car service rules be filed, as it may have required carriers to do under the provisions of section 1 of the act, it was expected that carriers promptly amend such rules to conform to the findings and evidence same by filing copies with the Commission. *Id.* (276).

**FINDINGS OF COMMISSION.** *See also* **ORDERS OF COMMISSION.**

Carriers filed rates for removal of undue prejudice found to exist in original report, 59 I. C. C., 321, wherein no order was entered, but state commission suspended rates filed for intrastate application. Upon further consideration, rates filed by carriers found just and reasonable and order entered giving effect to conclusions reached in original report. *Public Service Commission of Oregon v. Director General*, 633.

**FRACTIONS.**

Contention that as supplement to general order No. 28, issued June 12, 1918, published specific increases on coal authorized by the general order, but not the rule concerning the disposition of fractions, such rates were excepted from the application of that rule, *Held*: Not sustained by the provisions of the supplement, and if it were the fact would not be controlling. *Tallulah Cotton Oil Co. v. Director General*, as Agent, 41.

**FREE TIME.** *See* **DEMURRAGE.****FUEL ADMINISTRATION.**

Because of regulations of the United States Fuel Administration complainant, located at Grayling, Mich., was obliged to procure its coal from Midland, Ind. Allegation that combination rates charged were unreasonable to extent they exceeded lower joint rate subsequently established, *Held*: Subsequent reduction of a rate does not, of itself, prove that the rate previously in force was unreasonable. *Du Pont de Nemours & Co. v. Director General*, as Agent, 89.

**FURTHER ARGUMENT.** *See also* **FURTHER CONSIDERATION; FURTHER HEARING; RECONSIDERATION; REHEARING; SUPPLEMENTAL REPORT.**

Upon further argument, maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and eastern ports and interior eastern points, on the other. Original report 57 I. C. C., 523, modified. *Corp. Commission of N. C. v. Director General*, 64.

**FURTHER CONSIDERATION.** *See also* **FURTHER ARGUMENT; FURTHER HEARING; RECONSIDERATION; REHEARING; SUPPLEMENTAL REPORT.**

Upon further consideration, order of Commission continuing in effect indefinitely a former order entered pursuant to *Natchez Chamber of Commerce*, 52 I. C. C., 105, for the removal of undue prejudice or unjust discrimination, vacated, as the situation does not now exist and will not be revived. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 464.

In original report, 60 I. C. C., 757, rates on peanut oil, in tank-car loads, and on l. c. l. shipments in barrels, from Suffolk, Va., to Macon, Ga., found not unreasonable. Upon further consideration, rates on shipments in tank-car loads found unreasonable and reparation awarded. Prior finding as to l. c. l. shipments, affirmed. *Procter & Gamble Co. v. Director General*, as Agent, 713.

**FURTHER HEARING.** *See also* **FURTHER ARGUMENT; FURTHER CONSIDERATION; RECONSIDERATION; REHEARING; SUPPLEMENTAL REPORT.**

Upon further hearing, original reports 53 I. C. C., 549, just, reasonable, and equitable divisions to be accorded the Fairport, Painesville & Eastern R. R., out of joint interstate rates to and from Alkali, Ohio, prescribed for the future and adjustment required from date of filing of petition. *Diamond Alkali Co. v. F., P. & E. R. R. Co.*, 161.

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 502, modified in the interest of clarity, by striking therefrom the corporate titles of carriers not engaged in the transportation of passengers in interstate commerce. *Minnesota Fares and Charges*, 198.

Upon further hearing, readjustment of rates on plaster and gypsum products from Ft. Dodge, Gypsum, and Mineral City, Iowa, and Grand Rapids, Mich., to certain territory in Wisconsin, Michigan, and Minnesota, proposed by defendants in conformity with findings in original report, 57 I. C. C., 284, disapproved, and a reasonable and nonprejudicial adjustment from Grand Rapids, prescribed. *Grand Rapids Plaster Co. v. Director General*, 237.

Upon further hearing, original report, 40 I. C. C., 291, rates on glass fruit jars and jelly glasses, from Sapulpa and Sand Springs, Okla., and Hillsboro, Ill., to Pacific coast terminals and certain intermediate points, found not unreasonable but unduly prejudicial in favor of competitors located at Muncie, Ind., Wheeling, W. Va., and Washington, Pa. *Reparation denied. Kerr & Co. v. S. S. Ry. Co.*, 296.

Upon further hearing, former reports 19 I. C. C., 333, and 35 I. C. C., 33, amounts of reparation fixed due to the exaction of unreasonable rates on shipments of yellow-pine lumber and lumber products from points in Louisiana to points in Nebraska and Kansas. *Louisiana Central Lumber Co. v. C., B. & Q. R. R. Co.*, 417.

Original report, 55 I. C. C., 331, wherein intrastate shipments of silicate of soda moving during federal control were found misrouted and overcharged, overruled upon further hearing. Rates charged found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Boldt Paper Mills v. Director General*, as Agent, 471.

Upon further hearing, original report 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas found so related that disturbance of that relation would contravene the interstate commerce act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. *Intrastate Rates within the State of Texas*, 591.

Evidence on further hearing, original report 60 I. C. C., 337, held not to warrant a change in rates on logs between points in Indiana on intrastate traffic, or a modification of the order in that proceeding relative to rates on coal applicable intrastate in Indiana for distances of less than 80 miles. *Indiana Rates, Fares, and Charges*, 648.

**FURTHER HEARING—Continued.**

On further hearing, reparation due to undue prejudice found to exist in original report, 56 I. C. C., 298, denied, as it was not shown that the prices of complainant's products were determined by competition; nor during period when they were fixed by the government, on cost of production of those competitors; nor that they were lower than they would have been if competitors had not enjoyed the preferential basis of rates. *Canton Chamber of Commerce v. P. Co.*, 726.

**GASOLINE.**

Taking into consideration the process of manufacture and the Commission's description under its regulations for the transportation of dangerous articles, commodity involved found to be gasoline. *Southern Carbon Co. v. A. & L. M. Ry. Co.*, 738.

As a general proposition moves on commodity rates. *Id.* (738).

**GENERAL ORDER NO. 28. See FEDERAL CONTROL.****GENESEE & WYOMING RAILROAD COMPANY.**

Found to be a common carrier subject to the act and basis of payment for use or detention of foreign cars on its line prescribed. *Genesee & Wyoming R. R. Co.*, 680.

History and description of. *Id.* (680-681).

**GOVERNMENTAL AGENCIES.**

Demurrage and average free time on export shipments moving to port of export under domestic bills of lading found not unreasonable. Cars arrived either too early or too late for vessels engaged due to negligence of governmental agencies in failing to cooperate in bringing them forward and obviate demurrage, but complainants were cognizant of procedure followed by those agencies and while cars were at the port they were under their full control and could have been reconsigned, sold locally, or disposed of in any other way. *American Smelting & Refining Co. v. Director General*, as Agent, 583.

It is beyond the Commission's jurisdiction to pass upon the negligence of governmental agencies in failing to efficiently cooperate in bringing forward shipments for export early enough for loading into vessels on which space engaged, and thereby to obviate demurrage. The various steps taken by the government during the war were for the benefit of the public in general and were intended to and did facilitate commerce. *Id.* (587).

Contention that shipments were detained at port as result of action of government in commandeering vessels on which space engaged, and that no demurrage should have been assessed during time when the lines of defendant carriers were being operated by a federal agency, not sustained, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General*, as Agent, 689 (690-691).

**GROUPING.**

While the Commission is urged to adjust the divisions in New England "as a whole," some of the roads in that territory have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to authorize the Commission to do. *New England Divisions*, 513 (565).

**GROUP RATES.** *See also* **BLANKET RATES.**

Rates on slack-barrel staves from Crowder, Miss., located on the Batesville Southwestern R. R., to interstate points, found not unreasonable, but unduly prejudicial to extent they exceed the group rates applicable from Batesville, Miss., the junction point of that carrier with the Illinois Central, and Charleston, Miss., a branch line point. Relationship of rates prescribed. *Hollingshead Co. v. Director General*, as Agent, 147.

Rates on lumber and forest products from points on the lines of the Portland Ry., Light & Power Co. and Willamette Valley Southern Ry., to certain interstate destinations not found intrinsically unreasonable, but refusal of defendants to maintain joint rates on the coast group basis from such points, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. Reparation denied. *Cameron-Hogg Lumber Co. v. Director General*, as Agent, 218.

Rates on coal from complainant's mine at Gillespie, Ill., to interstate destinations found not unreasonable but unduly prejudicial to extent they exceed, except via St. Louis, Mo., the rates on like traffic from mines located on steam lines within the Springfield group, and via St. Louis to extent they exceed the rates from similar mines within the Belleville group, to the same destinations. Reparation denied. *Gillespie Coal Co. v. I. T. S.*, 335.

Prescribing rates as a whole in rate groups necessarily means that the return will not be the same for each carrier. *New England Divisions*, 513 (526).

**HANDLING.**

The handling of a shipment in a peddler car which is loaded in station order at the packer's plant as compared with an l. c. l. shipment, through the carriers' freight houses, is a handling under different circumstances and conditions. They are not comparable, and the Commission does not think that a finding of undue prejudice could be based upon that condition, especially when carriers accord to the grocers a reasonably comparable service by holding themselves out to furnish station-order cars. *National Wholesale Grocers' Asso. v. Director General*, 375 (402).

**IMPORT AND DOMESTIC.**

Following *Meridian Traffic Bureau*, 60 I. C. C., 549, domestic rates assessed on imported blackstrap molasses, in tank-car loads, from Mobile, Ala., and New Orleans, La., to Memphis, Tenn., due to the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable. *Memphis Merchants Exchange v. Director General*, as Agent, 96.

Import rates lower than domestic rates are frequently, if not generally, influenced by considerations which are unrelated to, and have little if any bearing upon, the reasonableness *per se* of the domestic rates. *Nagase & Co. v. Director General*, as Agent, 422 (424).

**IMPORT TRAFFIC.**

Rates on imported potato starch from Pacific coast ports to Chicago, Ill., New York, N. Y., and points in Pennsylvania and Massachusetts, found unreasonable as compared with rates on the same or analogous commodities between points in the same general territory for similar distances. Reparation awarded. *Nagase & Co. v. Director General*, as Agent, 422.

**IMPROVEMENTS.** See ADDITIONS AND BETTERMENTS.

**INBOUND AND OUTBOUND.**

Local rates to and from concentrating point, assessed on shipments of cotton found not unreasonable, discriminatory, or unduly prejudicial where complainant failed to comply with tariff requirement which provided for surrender of inbound freight bills in order to obtain the benefit of through rate from point of origin to ultimate destination. *Rumble & Wensel Co. v. Director General, as Agent*, 110.

Failure of defendants to provide for absorption of charges for interchanging interstate inbound c. l. traffic at Downingtown, Pa., or to interchange outbound traffic at that point and provide charges therefor, not found unreasonable, discriminatory, or unduly prejudicial. If such switching arrangements were established carrier would be required to hand traffic over to its competitor and short haul itself. *Miller Paper Co. v. P. R. R. Co.*, 705.

**INCONSISTENCY.**

A plan of transportation practices so fraught with incongruities and from which anything might be proved by a judicious selection of items, is indefensible. *New England Divisions*, 518 (565).

**INCORPORATION.**

Is not a necessary incident to a common carrier status under the act, and, conversely, the mere fact of incorporation can not transform a plant facility into a common carrier. *Wyandotte Terminal R. R. Co.*, 1 (5).

**INCREASED RATES.** See ADVANCE IN RATES; DOUBLE INCREASE.

**INDUSTRIAL LINES.**

Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. *B. & W. C. Ry. Co. v. P., C., C. & St. L. R. R. Co.*, 357 (361); *Tionesta Valley Ry.*, 473 (478); *Genesee & Wyoming R. R. Co.*, 680 (683).

**INSOLVENCY.** See SOLVENCY.

**INTENTION.**

Proof of error in the publication of rates does not justify a departure from the published rates, and the intention of tariff framers is not controlling. *Seaboard By-Product Coke Co. v. Director General, as Agent*, 317 (329).

Whatever may have been the intention of the framers, a tariff is to be construed according to its terms. *Southern Veneer Assn. v. A. C. L. R. R. Co.*, 669 (674).

**INTERCHANGE OF CARS.**

*Tionesta Valley Ry. Co.* found to be a common carrier subject to the act, and following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between it and trunk line connections with respect to use and detention of foreign cars and basis for settlement of accrued charges, prescribed. *Tionesta Valley Ry. Co.*, 473.

**INTERCHANGE OF TRAFFIC.**

Charges for interchanging interstate inbound c. l. traffic between defendants' lines at Downingtown, Pa., found unreasonable to extent they exceeded charges prescribed in *Thatcher Mfg. Co.*, 57 I. C. C., 244. Reasonable maximum charges prescribed for the future. *Miller Paper Co. v. P. R. R. Co.*, 705.

**INTERCHANGE OF TRAFFIC—Continued.**

Failure of defendants to provide for absorption of charges for interchanging interstate inbound c. l. traffic at Downingtown, Pa., or to interchange outbound traffic at that point and provide charges therefor, not found unreasonable, discriminatory, or unduly prejudicial. If such switching arrangements were established carrier would be required to hand traffic over to its competitor and short haul itself. *Id.* (705).

A reasonable charge for the delivery from one carrier to another should not exceed 2 cents per 100 pounds. *Id.* (709).

**INTERCHANGE TRACKS.**

Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained, and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. *Central Pennsylvania Lumber Co. v. Director General as Agent*, 99.

**INTERCORPORATE RELATIONSHIPS.**

Complainant contended that a certain coal company and defendant were so closely related that payment of refunds by the coal company to complainant's competitors was equivalent to payment by defendant and a departure from the published tariffs. *Held*: Since practices no longer exist and complainant submitted no proof of damage as the direct and proximate result of the alleged unjust discrimination or undue prejudice, question not decided. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211 (216).

Mere fact of financial or corporate relationship between an industry and a common-carrier industrial railroad does not alone justify a trunk line in according the controlling industry less favorable treatment than that given independent industries served by the industrial railroad. *Tide-water Oil Co. v. Director General, as Agent*, 226 (227).

**INTERMEDIATE POINT.**

Rates on empty barrels from Carthage and Republic, Mo., to Westville, Okla., found unreasonable to extent it exceeded lower rate, applicable under Rule 77 of Tariff Circular 18-A, from Springfield and Joplin, Mo., from which Carthage and Republic are intermediate. No request made for establishment of lower rate prior to movement but usual practice of defendant is to maintain same rates on traffic from Carthage and Republic as from Springfield and Joplin. Reparation awarded. *West v. St. L.-S. F. Ry. Co.*, 45.

Shipper made no request for establishment of lower rate to intermediate point under Rule 77 of Tariff Circular 18-A, as carrier accepted prepaid charges based on lower rate to farther distant point. Subsequently the same rate established to both points but consignee paid the difference between charges prepaid and those applicable and was reimbursed therefor by complainant. *Held*: Rate legally applicable found unreasonable to extent it exceeded lower rate subsequently established and reparation awarded. *De Jean v. Director General, as Agent*, 495.

**INTERURBAN ROAD.**

Chicago, North Shore & Milwaukee R. R., found to be a common carrier subject to the act, and in its interurban operations, both state and interstate, is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and this Commission. *Interstate Fares of the C., N. S. & M. R. R.*, 188 (193).

**INTRAPLANT SWITCHING.** *See SWITCHING.*

**INTRASTATE RATES.** *See STATE RATES.*

**INVESTMENTS.**

Made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates; nor will the Commission consider investments of complainant's competitors in mines served by a siding on which two tipples were installed as justifying carrier's refusal to furnish cars to complainant under substantially similar circumstances and conditions. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (481).

**ISOLATED SHIPMENT.** *See SPORADIC MOVEMENT.*

**ISSUE.**

Contention that carriers misinterpreted and misapplied general order No. 28, by adding increases to each factor instead of but once to the combination rates, *Held*: Failure to strictly adhere to the terms of that order, the filing of which was not required by the federal control act, can not be construed as defeating the validity of rates filed by the President through his duly appointed agent, and since issue before the Commission is the justness and reasonableness of rates assailed, the manner in which they are arrived at is only one of the elements to be considered in determining that issue. *Acme Cement Plaster Co. v. Director General*, as Agent, 119.

Complainants have no right to expect an award of damages upon an issue which they have not attempted to raise in the manner prescribed by the Commission's liberal rules of procedure; and as to which defendant has not been apprized in the usual course. *Schlicher v. Director General*, 181 (185).

Judicial bodies with unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the cause, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. It is manifest any other rule would result in surprise and injustice. *Id.* (185).

An award of damages by the Commission must be as certain and definite in law and fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. That basis would be wholly lacking if a controversy was determined upon an issue of law raised, not in the pleadings, but upon brief and argument; and if the fact was merely inferable from testimony received solely for another and a collateral purpose. *Id.* (185).

Complainant never sought leave to amend its complaint to broaden the issue originally stated, but upon brief and on oral argument urged undue preference of operators not specifically alleged in the original complaint. Objection of defendant that such testimony, which tended to broaden the issue, should not be considered so far as the allegation of undue prejudice is concerned, sustained. *Id.* (184-185).



**JOINT MINES.**

Defined. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259; *Dering Mines Co. v. Director General*, 265.

While a joint mine has an advantage over local mines because of the additional markets which it can reach by reason of its location on two railroads, such mine can not always avail itself of its advantage because of the practice in the coal business to make contracts for yearly periods. Neither is it possible at all times to order all cars from the carrier having the greater supply, as its contracts may also require that shipments be made by the line having the lesser supply. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater supply. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (275).

**JOINT RATES.**

Owing to extraordinary conditions complainant was unable to obtain sufficient coal from the Westmoreland district of Pennsylvania from which its supply is ordinarily obtained, and shipments were made from certain points in the Mercer-Butler and Pittsburgh districts to Perth Amboy, Natco, and Port Murray, N. J. *Held*: Combination rates charged, while higher, distance considered, than those prevailing from near-by points to same destinations or points in that vicinity over the same or other routes, found not unreasonable and establishment of joint rates found not warranted. *National Fireproofing Co. v. Director General*, as Agent, 49.

Rates on lumber and forest products from points on the lines of the Portland Ry., Light & Power Co. and Willamette Valley Southern Ry., to certain interstate destinations not found intrinsically unreasonable, but refusal of defendants to maintain joint rates on the coast group basis from such points, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. *Reparation denied. Cameron-Hogg Lumber Co. v. Director General*, as Agent, 218.

**JUDICIAL BODIES.**

With unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the cause, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. It is manifest any other rule would result in surprise and injustice. *Schlicher v. Director General*, 181 (185).

**JUDICIAL NOTICE.**

Judicial notice taken of the "importance to the public of the transportation services of" complainants, common carriers in New England seeking establishment of just, reasonable, and equitable divisions, as well as that of the principal defendants. *New England Divisions*, 518 (516).

**JUNCTION.**

In the absence of undue prejudice, a carrier can not be required to surrender traffic to connections at junctions which afford it hauls substantially less than the length of its line, when it offers the shortest route through other junctions, and affords as prompt service under normal conditions as can be obtained over any route. *Boston Wool Trade Assn. v. A., T. & S. F. Ry. Co.*, 228 (229).

**JUNCTION-POINT MINES.**

Mines which are given a joint status by reason of their being served under trackage agreements are in the same category as junction-point mines, and any preference and advantage which such mines enjoy is not undue, as actual or constructive location upon two or more lines substantially differentiates their situation from that of local mines, situated on and served only by one railroad. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259; *Dering Mines Co. v. Director General*, 265.

Defined. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259; *Dering Mines Co. v. Director General*, 265.

**JUNCTION-POINT RATES.**

Rates on slack-barrel staves from Crowder, Miss., located on the Batesville Southwestern R. R., to interstate points, found not unreasonable, but unduly prejudicial to extent they exceed the group rates applicable from Batesville, Miss., the junction point of that carrier with the Illinois Central, and Charleston, Miss., a branch line point. Relationship of rates prescribed. *Hollingshead Co. v. Director General*, as Agent, 147.

Upon rehearing, maintenance by defendants of junction-point rates on coal to points on the Morristown & Erie R. R., while refusing to maintain such rates to points on the Mount Hope Mineral R. R., found not to result in undue prejudice as circumstances and conditions surrounding the movements are substantially different and there are no industries on the Morristown which compete with industries on the Mineral. Original report in 56 I. C. C., 158, reversed. *Empire Steel & Iron Co. v. Director General*, 157.

**JUNK.**

Rate on pieces of iron and steel having value for remelting purposes only, billed as scrap iron from Ann Arbor, Mich., to Kalamazoo, Mich., during Federal control, found not unreasonable as compared with lower rates from Grand Rapids, Mich., to Benton Harbor and Kalamazoo, Mich. *D'Arcy Spring Co. v. Director General*, as Agent, 129.

Rates on scrap iron generally are understood to apply on scraps or pieces of steel or iron useful only for remelting. The phrase "value for remelting purposes only" defines the nature of the articles and does not make the rate to be applied dependent upon its use. *Id.* (130).

**JURISDICTION.**

The Commission is without power to order refund of war taxes. *Best Clymer Mfg. Co. v. Director General*, as Agent, 62 (63); *Sligo Iron Store Co. v. W. M. Ry. Co.*, 643 (645).

All-water rates applying locally between Norfolk and Richmond, Va., on the one hand, and Philadelphia, Pa., New York, N. Y., and Boston, Mass., on the other, are not subject to the act. *Corporation Commission of N. C. v. Director General*, 64 (83).

Under section 206 (c) of the transportation act, 1920, the Commission has jurisdiction over intrastate shipments moving on and after January 1, 1918. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 99.

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control. *D'Arcy Spring Co. v. Director General*, as Agent, 129.

## JURISDICTION—Continued.

Under the provisions of paragraph 6, section 15, of the interstate commerce act as amended by the transportation act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition. *Diamond Alkali Co. v. F. P. & E. R. R. Co.*, 161 (165).

In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. *Schlicher v. Director General*, 181 (186).

That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. *Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co.*, 228 (230).

Contracts under which a subsidiary to a proprietary industry acts as switching agent for carriers not shown to violate the act and the Commission is without power to abrogate such contracts or revise their terms. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248 (252).

Under paragraph 21 of section 1 of the act the Commission may require a carrier to extend its line only when the extension is reasonably required in the interest of public convenience or when the expense involved will not impair the ability of the carrier to perform its duty to the public. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261-262).

Under paragraph 13 of section 1 of the act, the Commission is authorized to require carriers to file their rules and regulations with respect to car service, and it may direct that such rules and regulations be incorporated in the schedules showing rates, fares, and charges for transportation and be subject to any or all of the provisions of the act relating thereto. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (276).

It is the right of carriers to perform any transportation service which it is their duty to perform, and in the absence of undue prejudice the Commission is without power to require them to make an allowance. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 339 (343-344).

The extent of the dealings of the packers in commodities other than packing-house products is not for the Commission to condemn or approve. *National Wholesale Grocers' Asso. v. Director General*, 373 (382).

With respect to divisions accruing to carriers out of joint rates with Canadian connections, the Commission's jurisdiction inheres only in so far as the transportation takes place within the United States. *New England Divisions*, 513 (516).

The Commission must be guided by the intent of Congress as expressed in the provisions of the present statute, and it is fundamental that the Commission can act only under the jurisdiction conferred upon it by Congress, exercising only such powers as it now has subject to any limitations which now attach to them. *Id.* (560).

## JURISDICTION—Continued.

Under paragraph (6), section 15 of the act, the Commission is authorized to prescribe just, reasonable, and equitable divisions. The Commission's jurisdiction attaches irrespective of the manner in which divisions theretofore prevailing were established, its duty to prescribe arising when, after full hearing, it is of opinion that the divisions brought in issue "are or will be unjust, unreasonable, inequitable, or unduly prejudicial or preferential as between the carriers parties thereto." *Id.* (560-561).

The Commission is authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite and any attempt to prescribe a blanket increase as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable would override the plain mandate of law. *Id.* (565). It is beyond the Commission's jurisdiction to pass upon the negligence of governmental agencies in failing to efficiently cooperate in bringing forward shipments for export early enough for loading into vessels on which space engaged, and thereby obviate demurrage. The various steps taken by the government during the war were for the benefit of the public in general and were intended to and did facilitate commerce. *American Smelting & Refining Co. v. Director General, as Agent*, 583 (587).

No opinion expressed upon question of liability for outstanding undercharges, a question determinable only by the court having jurisdiction and upon the facts in each case. *Conf. Ruling 314*. *Id.* (589).

LEGAL RATES. *See also* OVERCHARGES.

The legal rate is the rate in effect on date shipments are accepted for transportation. *Transcontinental Freight Co. v. Director General, as Agent*, 127 (128).

Combination rates on lumber from certain points in the Carolinas, and Virginia to Penns Grove, N. J., found illegal to extent they exceeded joint rate contemporaneously in effect. Reparation awarded. *Du Pont de Nemours & Co. v. Director General, as Agent*, 151.

Proof of error in the publication of rates does not justify a departure from the published rates, and the intention of tariff framers is not controlling. *Seaboard By-Product Coke Co. v. Director General, as Agent*, 317 (329).

Rate on starting devices and gasoline-engine starters found applicable to wiring harness and other parts constituting such devices and starters. Tariff did not name units intended to be included in commodity description used, which was broad enough to cover all the necessary parts thereof. Refund of overcharges directed. *Chevrolet Motor Co. of California v. Director General, as Agent*, 603.

LESS THAN CARLOADS. *See also* ANY-QUANTITY RATES; CARLOAD AND LESS-THAN-CARLOAD.

Proposed increased rates on iron or steel bolts, 1 c. 1., from Kansas City, Mo., to Galveston and Beaumont, Tex., and points taking same rates, which are in excess of the New Orleans combinations and rates from St. Louis, Mo., through Kansas City to the same destinations, found not justified, but to extent they are not in excess of such rates, found justified. Bolts from Kansas City to Texas Points, 9.

Short-haul 1 c. 1. traffic is generally conceded to be unremunerative, but it can not be said that because complainants originate a larger percentage of 1 c. 1. traffic than defendants, that fact should be given weight in determining that the divisions of complainants "as a whole" are unjust. *New England Divisions*, 513 (540).

**LIABILITY.**

Following *Riverside Mills*, 40 I. C. C., 501, where through rate, joint or combination, found unreasonable and reparation awarded, the order entered runs against the carriers, collectively, that participated in the transportation. *Louisiana Central Lumber Co. v. C., B. & Q. R. R. Co.*, 417 (419).

Carriers' responsibility for the safety of freight stored upon right of way instead of in warehouses is not altered by fact that warehouses were congested. *Dodge Bros. v. Director General*, as Agent, 690 (691).

**LIKE KINDS OF TRAFFIC.** See **COMPARATIVE RATES**; **SECTION 2.**

**LIMITATION OF ACTION.**

Under section 206 (f) of the transportation act, 1920, the period of federal control is not to be computed as part of the period of limitation in claims for reparation for causes of action arising prior thereto, and claims named in a complaint filed during federal control based on causes of action which arose within two years prior thereto are not barred by the statute. *Lazarus v. N. Y. C. R. R. Co.*, 271 Fed. 98. *Pittsburgh Grain & Hay Exchange v. Director General*, as Agent, 506 (508).

Excluding period of federal control as part of the period of limitation in claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, complaint found to have been filed within two years and within the Commission's jurisdiction. *San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co.*, 675.

**LINE-HAUL RATES.**

Where tracks within a plant are safe and practicable for standard power and equipment and the spotting service is not complex, the receipt and delivery of cars at customary places for loading and unloading within the plant is a service which is covered by the line-haul rates. *Diamond Alkali Co. v. F., P. & E. R. R. Co.*, 161 (164).

**LOADING.**

The handling of a shipment in a peddler car which is loaded in station order at the packer's plant as compared with an l. c. l. shipment, through the carriers' freight houses, is a handling under different circumstances and conditions. They are not comparable, and the Commission does not think that a finding of undue prejudice could be based upon that condition, especially when carriers accord to the grocers a reasonably comparable service by holding themselves out to furnish station-order cars. *National Wholesale Grocers' Asso. v. Director General*, 875 (402).

**LOCAL MINES.**

Mines which are given a joint status by reason of their being served under trackage agreements are in the same category as junction-point mines, and any preference and advantage which such mines enjoy is not undue, as actual or constructive location upon two or more lines substantially differentiates their situation from that of local mines, situated on and served only by one railroad. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 250; *Dering Mines Co. v. Director General*, 265.

Defined. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 250; *Dering Mines Co. v. Director General*, 265.

**LOCAL RATES.** See **COMBINATION RATE.****LOCATION.** See also **ADVANTAGES AND DISADVANTAGES.**

While a joint mine has an advantage over local mines because of the additional markets which it can reach by reason of its location on two railroads, such mine can not always avail itself of its advantage because

**LOCATION—Continued.**

of the practice in the coal business to make contracts for yearly periods. Neither is it possible at all times to order all cars from the carrier having the greater supply as its contracts may also require that shipments be made by the line having the lesser supply. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater supply. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (275).

**LONG AND SHORT HAUL.**

*Deering, Kans.*: Authority to charge rates on slack coal from Pittsburg, Kans., to Caney, Kans., lower than from Deering and other intermediate points, denied. *Weir Smelting Co. v. Director General*, as Agent, 118 (115).

*Galveston, Tex.*: Authority to continue to charge rates on cold-rolled steel bars from Beaver Falls, Pa., New York, N. Y., Cumberland, Md., and other points in Atlantic seaboard territory, to Galveston, via New York, N. Y., higher than on like traffic to points beyond Galveston, denied. *Texas Carnegie Steel Asso. v. Director General*, as Agent, 258 (257).

*Knoxville, Tenn.*: Authority to charge rates on cottonseed meal from Memphis, Tenn., to Bristol, Va.-Tenn., and on mixed feed from Memphis and Nashville to Bristol, Norfolk, Va., and Baltimore, Md., and from Memphis and Louisville to Raleigh, N. C., lower than from Knoxville and other intermediate points, denied. *Security Mills & Feed Co. v. Director General*, as Agent, 657 (667).

*New Mexico points*: Rates on wheat from points in New Mexico on the C., R. I. & P. Ry. to Galveston, Tex., which are higher for shorter than for longer distances over the same lines or routes in the same direction, not protected by appropriate application, found unlawful and should be eliminated promptly. *New Mexico Corp. Comm. v. Director General*, 852 (856).

*New York and Connecticut points*: Authority to continue to charge rates on coke from the Connellsville, Latrobe, and Gallitzin districts in Pennsylvania to Port Chester, N. Y., lower than on like traffic to intermediate points, viz, New Rochelle, Rye, and Brewster, N. Y., and Danbury, South Norwalk, and Stamford, Conn., denied. *Seaboard By-Product Coke Co. v. Director General*, as Agent, 817 (830).

**LOW-GRADE COMMODITY.**

Minimum charge of \$15 per car assessed on intrastate shipments of clay found unreasonable to extent it exceeded charges based on rate and actual weight of shipments, not subject to the minimum charge. Commodity was of low grade, movements were regular and for short distances, and the physical condition of defendant's road would not permit the handling of cars sufficiently loaded to produce the minimum charge. Reparation awarded. *Dickey v. Director General*, as Agent, 228.

Proposed increased rates on pulp wood from points in South Carolina and Georgia on the Charleston & Western Ry. Co., to Kingsport, Tenn., found not justified. *Pulp Wood to Kingsport, Tenn.*, 277.

Following *Du Pont de Nemours & Co.*, 43 I. C. C., 1 and 45 I. C. C., 479, sixth-class rate on sporadic shipments of refuse, bricks, dirt, excavated material, flue dust, sand, and slag, low grade commodities useless for any purpose other than filling in and grading, found unreasonable and reparation awarded on basis of commodity rate subsequently established.

*Pusey & Jones Co. v. Director General*, as Agent, 291.

**LOW-GRADE COMMODITY—Continued.**

Sixth-class rates on ice from Fleischmann's, N. Y., to Grand Gorge and Hobart, N. Y., during federal control, found unreasonable as compared with rates on other low-grade commodities for like and greater distances between neighboring points and with rates on the same commodity between other points for greater distances. Reparation awarded on basis of lower commodity rate subsequently established. *Sheffield Farms Co. v. Director General*, as Agent, 508.

Contention that because commodities are of low grade, or because of other sources of supply, their transportation from particular points should be confined to local hauls, not sustained. Shippers may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and unjust discrimination. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729 (731).

**MANAGEMENT.**

Proposed reduction in the minimum weight on sugar from points in Colorado territory to various destinations, found not justified. The provisions of section 15a of the act as to efficient and economical management should be kept constantly in mind; the proposal seems inconsistent with the general campaign for increased carloading and efficiency; and to permit the reduction from Colorado territory without a corresponding reduction from other producing points would place the latter at a disadvantage. *Carload Minimum Weight on Sugar*, 510.

**MANUFACTURED ARTICLES.**

Rate on pig iron from Wharton, N. J., to Seattle, Wash., for export, found not unreasonable, discriminatory, or unduly prejudicial because it exceeded a differential of 5 cents under the export rate on manufactured iron and steel articles. *Suzuki & Co. v. Director General*, as Agent, 144.

Molten steel cast into convenient shape for handling, whether square or octagonal in cross section, is an ingot and constitutes raw material out of which an article of some different size and shape is to be made. When cast in molds accurately fashioned from patterns to produce the particular sizes and shapes required for a specific article it is a casting, which comes from the mold in the same general form that it retains as a finished article. *Pacific Coast Steel Co. v. Director General*, as Agent, 207 (208).

**MANUFACTURER'S RATES. See NET RATES.****MARKETS.**

Muscatine, Iowa, is largest pearl-button market in the United States. Clam and Mussel Shells from Kentucky Points, 366.

Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on millwork from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in rates between these points of origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

Contention that because commodities are of low grade, or because of other sources of supply, their transportation from particular points should be confined to local hauls, not sustained. Shippers may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and unjust discrimination. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729 (731).

**MARKING PACKAGES.**

Rules and practices of American Ry. Express Co., whereunder shipments are refused unless the declared value thereof is marked on the package by the shipper found unlawful in the absence of proper provisions in schedules authorizing such action. *Viscose Co. v. American Ry. Express Co.*, 32.

Carriers reasonably may require shippers to properly mark their shipments and if shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose. *Id.* (83-84). To require shippers to mark the value on packages, when shipments are subject to rates based on value, would seem to be in the interest of operating efficiency and not unreasonable, but if carriers desire to enforce such a regulation, it should be plainly stated in its schedules and uniformly observed. *Id.* (84-85).

**MEASURE OF RATE.**

Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. *National Fireproofing Co. v. Director General*, as Agent, 49 (55).

The percentage of increase under general order No. 28 is not controlling if the resulting rates are reasonable. *Ault & Wiborg Co. v. Director General*, as agent, 133 (134).

Rate applicable on manufactured iron and steel articles found not to be a proper measure of the reasonableness of the rates on ingots, and the maintenance of commodity rates on castings lower than the class rates on ingots does not of itself establish that the latter are too high. *Pacific Coast Steel Co. v. Director General*, as Agent, 207.

The reasonableness of rates can not be determined by a construction of general order No. 28. *Louisville Cement Co. v. Director General*, as Agent, 362 (364).

In determining the matter of reasonableness as well as of undue prejudice due consideration should be given to other rates charged on the same commodity by carriers serving the same or competing localities. *Security Mills & Feed Co. v. Director General*, as Agent, 405 (409).

Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (431).

Fact that in the great majority of instances rates were increased only 25 per cent under general order No. 28, while rate charged represented an increase exceeding 25 per cent of the rate previously in effect, does not afford a basis for a finding of unreasonableness. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

A subsequent reduction of a rate is not necessarily an admission that former rate was unreasonable. But where rate situation is investigated, and in consequence rates are temporarily established for longer distances which conform to those already in effect for less distances in the same territory, and after their expiration re-established where any need therefor shown, these facts have weight in determining whether the higher rates were unreasonable. *Swift & Co. v. Director General*, as Agent, 618 (623).



**MEASURE OF RATE—Continued.**

The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings on all traffic. If this were true the inevitable result would be to bring all rates to a common level. *Id.* (625).

The lawfulness of rates can not be determined entirely by a construction of general order No. 28. *Cedar Rapids Gas Co. v. Director General, as Agent*, 686 (641).

In determining whether rates are unreasonable, consideration can not be confined to one component. The through charge must be examined. *Cairo Asso. of Commerce v. Director General, as Agent*, 701 (702).

**MILEAGE RATES. See DISTANCE RATES.****MILK AND CREAM RATES.**

Minimum charge on milk and cream, established by the Director General on June 25, 1918, was subsequently canceled, leaving no minimum in effect. Rates assessed on shipments moving during interim found unreasonable to extent they exceeded rates contemporaneously applicable not subject to such minimum charge. Reparation awarded. *Wanzer & Sons v. M., St. P. & S. S. M. Ry. Co.*, 427.

Certain intrastate rates and charges required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges*, 440.

**MILLING IN TRANSIT. See TRANSIT ARRANGEMENTS.****MINIMUM CHARGE.**

Minimum charge of \$15 per car under general order No. 28 of the Director General, assessed on shavings and sawmill refuse from Wausau, Wis., to Brokaw and Rothschild, Wis., moving during federal control, found unreasonable to extent it exceeded charges contemporaneously in effect at rates per 100 pounds. Reparation awarded. *Wausau Box & Lumber Co. v. Director General, as Agent*, 56.

Minimum charge of \$15 per car under general order No. 28 of the Director General, plus additional charges for special train service, assessed on intrastate shipments of water, in tank-car loads, moving during federal control between points in Indiana, found unreasonable to extent they exceeded \$9 per car for distances of 15 miles and less and \$11.50 per car for distances in excess of 15 miles, with no additional charge for extra train service, prescribed in *Illinois Coal Traffic Bureau*, 56 I. C. C., 428. Reparation awarded. *Rowland Power Consolidated Collieries Co. v. Director General, as Agent*, 101.

Minimum charge of \$15 per car assessed on intrastate shipments of clay found unreasonable to extent it exceeded charges based on rate and actual weight of shipments, not subject to the minimum charge. Commodity was of low grade, movements were regular and for short distances, and the physical condition of defendant's road would not permit the handling of cars sufficiently loaded to produce the minimum charge. Reparation awarded. *Dickey v. Director General, as Agent*, 228.

Minimum charge on milk and cream, established by the Director General on June 25, 1918, was subsequently cancelled, leaving no minimum in effect. Rates assessed on shipments moving during interim found unreasonable to extent they exceeded rates contemporaneously applicable not subject to such minimum charge. Reparation awarded. *Wanzer & Sons v. M., St. P. & S. S. M. Ry. Co.*, 427.

**MINIMUM CLASS SCALE.**

Rates charged on intrastate shipments of silicate of soda moving during federal control found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move. *Boldt Paper Mills v. Director General, as Agent, 471.*

**MINIMUM WEIGHT.**

**In General:** Under appropriate conditions, a lower rate may properly apply on a higher c. l. minimum. The desirability of uniform minima should not be overlooked, but in the absence of any showing to the contrary it must be assumed that the higher minimum is reasonably intended to comport with the loading capacity of the cars. *Cairo Asso. of Commerce v. Director General, as Agent, 701 (708).*

**Logs, bolts, billets, and poles:** So-called manufacturers' or net rates on, from points on the Illinois Central and Mobile & Ohio railroads south of the Ohio River to Cairo, Ill., and minimum weights maintained by the Illinois Central in connection with such rates, found not unreasonable. *Cairo Asso. of Commerce v. Director General, as Agent, 701.*

**Sugar:** Proposed reduction in the minimum weight on, from points in Colorado territory to various destinations, found not justified. The provisions of section 15a of the act as to efficient and economical management should be kept constantly in mind; the proposal seems inconsistent with the general campaign for increased carloading and efficiency; and to permit the reduction from Colorado territory without a corresponding reduction from other producing points would place the latter at a disadvantage. *Carload Minimum Weight on Sugar, 510.*

**MISROUTING.**

**On unrouted shipments,** where lower combinations of legally applicable interstate rates were available over routes other than route over which joint rate charged applied, shipments found misrouted and reparation awarded. *Southern Veneer Asso. v. A. C. L. R. R. Co., 669 (674).*

**MISTAKE. See ERROR.****MIXED CARLOADS.**

Rates on fresh fruits and vegetables, in mixed carloads, from points in California to Phoenix, Ariz., found unreasonable to extent they exceeded rates equivalent to the corresponding class C rates from and to the same points. Reasonable maximum rates prescribed and reparation awarded. *Phoenix Chamber of Commerce v. Director General, as Agent, 368.*

Various rules applicable on mixed carloads of fresh meats and packing-house products found unjust, unreasonable, and unduly prejudicial to wholesale grocers in favor of the packers, and reasonable and uniform mixing rules prescribed for the future. *National Wholesale Grocers' Asso. v. Director General, 375 (408).*

Upon reconsideration, rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles from Lake Charles, La., to various points in Texas, found not unreasonable or discriminatory, and failure to provide that in assessing charges on mixed carloads of pine and cypress products, each of the products in the car shall be charged at the rate applicable upon that particular product, was not unreasonable. Former report, *Independent Cooperative Lumber Co., 51 I. C. C., 557*, reversed. *Monroe Shingle Co. v. Director General, as Agent, 714.*

**MIXED CARLOADS—Continued.**

Charges on mixed c. l. shipments should be based on the c. l. rate applying on the highest-rated article and subject to the highest minimum weight attaching to any article in the load. *Id.* (719).

Screens readily load in excess of the minimum weight, and mixed carload shipments of screens, sash and doors are frequently desired by small purchasers. Continuation of the distinction in classification and rates on the two kinds of millwork not warranted, and all these items should move on the same basis. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (724).

**MONOPOLY.**

The extent of the dealings of the packers in commodities other than packing-house products is not for the Commission to condemn or approve. *National Wholesale Grocers' Assn. v. Director General*, 873 (882).

**NAME.**

Reconsignment charge of \$2 per car for the substitution of the name of a new consignee for the old one in records of carrier at billed destination and involving no further movement of the car, found legally applicable and not unreasonable or otherwise unlawful. *Detroit Produce Assn. v. Director General*, as Agent, 283.

**NEGLIGENCE.**

It is beyond the Commission's jurisdiction to pass upon the negligence of governmental agencies in failing to efficiently cooperate in bringing forward shipments for export early enough for loading into vessels on which space engaged, and thereby obviate demurrage. The various steps taken by the government during the war were for the benefit of the public in general and were intended to and did facilitate commerce. *American Smelting & Refining Co. v. Director General*, as Agent, 583 (587).

**NET RATES.**

So-called manufacturers' or net rates on logs, bolts, billets, and poles, from points on the Illinois Central and Mobile & Ohio railroads south of the Ohio River to Cairo, Ill., and minimum weights maintained by the Illinois Central in connection with such rates, found not unreasonable. *Cairo Assn. of Commerce v. Director General*, as agent, 701.

**NOTICE. See also JUDICIAL NOTICE.**

Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *Rumble & Wensel Co. v. Director General*, as Agent, 110 (111).

**OPERATING CONDITIONS.**

One factor of a combination rate yielding somewhat high earnings found not exorbitant when consideration given to the fact that the distance was short and the country traversed mountainous. *Burns & Knapp v. B. S. & K. R. Ry. Co.*, 345 (347).

**OPPOSITE DIRECTION. See BOTH DIRECTIONS.****ORDER NOTIFY.**

Demurrage charges assessed on order-notify shipments found not unreasonable where cars were held pending receipt of other disposition orders and surrender of bills of lading and not for unloading on public team tracks, thus requiring an additional switching movement within the switching limits. Carrier was justified in declining to accept disposition orders until bills had been surrendered or other satisfactory assurance given as complainant's title depended upon possession of the bills of lading properly indorsed. *Alpirn v. Director General*, as Agent, 486.

**ORDER NOTIFY—Continued.**

Demurrage accruing after surrender of bills of lading on order-notify shipments constructively placed because of congestion at complainant's yard, due notice of which was furnished complainant, found to have been legally assessed. Individual cars were placed at particular points of unloading according to orders from complainant's foreman who failed to utilize the entire unloading capacity of the yard, evidenced by other cars standing on tracks in the immediate vicinity awaiting placement. *Id.* (488).

**ORDERS OF COMMISSION. See also FINDINGS OF COMMISSION.**

Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. Commission's orders for reparation require payment of the sum found due and run against all defendants. *United Paperboard Co. (Inc.) v. S. Ry Co.*, 60 (61).

Fear of carrier that a large part of the tonnage would be lost to it and routed via another line if it were to comply with the Commission's order for removal of undue prejudice, affords no justification for the maintenance of the unreasonable or unduly prejudicial rates found to exist. *Empire Steel & Iron Co. v. Director General*, 157 (160).

Upon further consideration, order of Commission continuing in effect indefinitely a former order entered pursuant to *Natchez Chamber of Commerce*, 52 I. C. C., 105, for the removal of undue prejudice or unjust discrimination, vacated, as the situation does not now exist and will not be revived. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 464.

**OUTBOUND TRAFFIC. See INBOUND AND OUTBOUND.****OVERCAPITALIZATION.**

Record plainly indicated that carrier greatly overcapitalized and afforded no tangible basis upon which alone to determine what should be the measure of a reasonable system of charges on the basis of the value of its property devoted to the public use. *Fares of the Washington-Virginia Ry. Co.*, 200 (208).

**OVERCHARGES.**

Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 99.

Each factor of combination rate increased under general order No. 28 of the Director General, but since that order provided for the application of but a specific single increase to the through rate and tariff of one of the participating carriers contained a rule to that effect, in which the remaining carriers concurred, shipment found overcharged and reparation awarded. *Silgo Iron Store Co. v. W. M. Ry. Co.*, 643.

Where, in the absence of through rates or a specific manner of constructing through rates, combination rates charged exceeded lower combinations of legally applicable interstate rates over route of movement, shipments found overcharged to extent that rates charged exceeded the lower combinations. Reparation awarded. *Southern Veneer Asso. v. A. C. L. R. Ry. Co.*, 669 (674).

**OVERCHARGES—Continued.**

Rate on starting devices and gasoline engine starters found applicable to wiring harness and other parts constituting such devices and starters. Tariff did not name units intended to be included in commodity description used which was broad enough to cover all the necessary parts thereof. Refund of overcharges directed. *Chevrolet Motor Co. of California v. Director General, as Agent, 693.*

**PAPER RATES.**

Are of little value for purposes of comparison with rates under which traffic moves. *Farley & Loetscher Mfg. Co. v. Director General, as Agent, 721 (724).*

**PARLOR-CAR SERVICE. See PULLMAN SERVICE.****PARTIES.**

Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. Commission's orders for reparation require payment of the sum found due and run against all defendants. *United Paperboard Co. (Inc.) v. S. Ry. Co., 60 (61).*

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 502, modified in the interest of clarity, by striking therefrom the corporate titles of carriers not engaged in interstate commerce. *Minnesota Fares and Charges, 198.* Following *Riverside Mills, 40 I. C. C., 501*, where through rate, joint or combination, found unreasonable and reparation awarded the order entered runs against the carriers, collectively, that participated in the transportation. *Louisiana Central Lumber Co. v. C., B. & Q. R. R. Co., 417 (419).*

Defendant contested rights of complainant, an association, to maintain a claim for reparation on ground that it did not pay any of the charges complained of and is not empowered to bring suit in behalf of its members. *Held:* Since prayer of complaint specifically named the members of complainant's organization who paid the charges and asked that they be awarded reparation, the members so named are co-complainants with the association, although not styled such in the caption of the complaint. *Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 506 (507-508).*

**PARTS.**

Rate on starting devices and gasoline-engine starters found applicable to wiring harness and other parts constituting such devices and starters. Tariff did not name units intended to be included in commodity description used, which was broad enough to cover all the necessary parts thereof. Refund of overcharges directed. *Chevrolet Motor Co. of California v. Director General, as Agent, 693.*

**PASSENGER FARES.**

Intrastate passenger fares of the Chicago, North Shore & Milwaukee R. R., an electric line, between points in Illinois, lower than the corresponding interstate fares between points in Illinois and points in Wisconsin, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Intrastate Fares of the C., N. S. & M. R. R. Co., 183.*

Proposed increased single and commutation fares of the Washington-Virginia Ry. Co., an electric line, between points on its system and Washington, D. C., approved in part. *Fares of the Washington-Virginia Ry. Co., 200.*

**PASSENGER FARES—Continued.**

Intrastate passenger fares required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate fares, authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges*, 440.

**PEDDLER CARS.**

Practice of carriers in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars not shown to result in undue prejudice to wholesale grocers or unduly to prefer the packers. *National Wholesale Grocers' Asso. v. Director General*, 375.

The peddler car is a refrigerator car loaded by the packer at his packing house with I. C. I. consignments, placed in the car in station order, i. e., in the order in which the towns for which the consignments are intended will be reached, so that consignments may be unloaded by the crews as the various stations are reached progressively, with a minimum of trouble and delay. *Id.* (379-380).

The handling of a shipment in a peddler car which is loaded in station order at the packers' plant as compared with an I. C. I. shipment, through the carriers' freight houses is a handling under different circumstances and conditions. They are not comparable, and the Commission does not think that a finding of undue prejudice could be based upon that condition, especially when carriers accord to the grocers a reasonably comparable service by holding themselves out to furnish station-order cars. *Id.* (402).

Various peddler-car rates and rules not shown unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing-house products in peddler cars in southwestern territory found unduly prejudicial to the wholesale grocers and unduly preferential of the meat packers in so far as said scale applies on lard substitutes, cottonseed, peanut, corn, and soya-bean cooking oils, canned meats, canned soups, chicken tamala, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients. *Id.* (408).

**PENALTY.**

One of the primary purposes of the per diem arrangement is to increase the use of freight equipment through expediting its movement and avoiding detention. Although the charge is intended to cover the cost of ownership, including maintenance, depreciation, taxes, interest, and other allocations incident to ownership, per diem savors of a penalty. *New England Divisions*, 518 (538).

**PER CAR RATES. See also MINIMUM CHARGE.**

Per car rate on cattle and hogs from New Orleans and Port Chalmette, La., to Birmingham, Ala., found unreasonable to extent it exceeded rate found reasonable in *Alabama Packing Co.*, 48 I. C. C., 506. Reparation awarded. *Birmingham Packing Co. v. N. O. & N. E. R. R. Co.*, 627.

**PERCENTAGE RATES.**

Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Boldt Paper Mills v. Director General*, as Agent, 471 (472).

**PER DIEM RECLAIM. See RECLAIM.**

**PLACEMENT.** *See* CONSTRUCTIVE PLACEMENT; DELIVERY; SPOTTING CARS. **PLANT FACILITY.**

Incorporation is not a necessary incident to a common carrier status under the act, and, conversely, the mere fact of incorporation can not transform a plant facility into a common carrier. *Wyandotte Terminal R. R. Co.*, 1 (5).

*Scottdale Connecting R. R. Co.* found to be a plant facility of the United States Cast Iron Pipe & Foundry Co., and not a common carrier. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 339 (343).

**PLEADING AND PRACTICE.**

Complainant never sought leave to amend its complaint to broaden the issue originally stated, but upon brief and on oral argument urged undue preference of operators not specifically alleged in the original complaint. Objection of defendant that such testimony which tended to broaden the issue, should not be considered so far as the allegation of undue prejudice is concerned, sustained. *Schlicher v. Director General*, 181 (184-185).

Complainants have no right to expect an award of damages upon an issue which they have not attempted to raise in the manner prescribed by the Commission's liberal rules of procedure; and as to which defendant has not been apprized in the usual course. *Id.* (185).

Judicial bodies with unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the cause, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. It is manifest any other rule would result in surprise and injustice. *Id.* (185).

An award of damages by the Commission must be as certain and definite in law and fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. That basis would be wholly lacking if a controversy was determined upon an issue of law raised, not in the pleadings, but upon brief and argument; and if the fact was merely inferable from testimony received solely for another and a collateral purpose. *Id.* (185).

**PORT-TO-PORT RATES.**

All-water rates applying locally between Norfolk and Richmond, Va., on the one hand, and Philadelphia, Pa., New York, N. Y., and Boston, Mass., on the other, are not subject to the act. *Corporation Commission of N. C. v. Director General*, 64 (63).

**POSTING.** *See* FILING AND POSTING.**POWER OF ATTORNEY.**

Defendant contested rights of complainant, an association, to maintain a claim for reparation on ground that it did not pay any of the charges complained of and is not empowered to bring suit in behalf of its members. *Held*: Since prayer of complaint specifically named the members of complainant's organization who paid the charges and asked that they be awarded reparation, the members so named are co-complainants with the association, although not styled such in the caption of the complaint. *Pittsburgh Grain & Hay Exchange v. Director General*, as Agent, 506 (507-508).

**POWER OF COMMISSION.** *See* JURISDICTION.

**PRACTICE.**

Refusal of carrier to accept certain shipments when tendered for transportation after close of business on day preceding effective date of increased rates found not to have resulted in unreasonable or unlawful charges, and acceptance of occasional shipments from complainant after the closing hour found not to establish the existence of such a practice. *Transcontinental Freight Co. v. Director General*, as Agent, 127.

**PREFERENCES AND PREJUDICES.** *See also* DISCRIMINATION.

**In General:**

Fear of carrier that a large part of the tonnage would be lost to it and routed via another line if it were to comply with the Commission's order for removal of undue prejudice, affords no justification for the maintenance of the unreasonable or unduly prejudicial rates found to exist. *Empire Steel & Iron Co. v. Director General*, 157 (160).

Undue prejudice, under section 8 of the act, ordinarily requires the prejudice suffered by one party to be a source of positive advantage to the one alleged to be preferred, and that a competitive relationship exists between the parties or commodities concerned. *Schlicher v. Director General*, 181 (183).

To obtain an award of damages complainant must prove that it has suffered actual pecuniary loss as a direct and proximate result of any alleged unjust discrimination or undue prejudice. *International Coal Co. Case*, 230 U. S., 184. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211 (216).

Ordinarily undue prejudice does not exist in the absence of competition. *Tidewater Oil Co. v. Director General*, as Agent, 226 (227).

While matters of car supply must be considered, they do not constitute ground for depriving a shipper of nonprejudicial rates. *Gillespie Coal Co. v. I. T. S.*, 335 (337).

Fact that demurrage and storage charges on export shipments are imposed at one port, and not at others, does not of itself constitute undue prejudice. *Dodge Bros. v. Director General*, as Agent, 689 (692).

**Car Distribution:** Following views expressed in the *Illinois Case*, 25 I. C. C., 286, rule 4 of Circular CS-81, Revised, governing method for ordering cars for joint mines, found unreasonable and unduly prejudicial to joint mines and unduly preferential of local mines to extent that it limits the aggregate orders of the joint mine to 100 per cent of its rating from both roads. Reasonable and nonprejudicial rules prescribed for the future. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269.

**Car Furnishing:** Refusal of defendants to furnish, upon reasonable request therefor, cars to complainant for the transportation of bituminous coal, while contemporaneously furnishing cars to other mine owners and operators, competitors of complainant and similarly located on private sidings on which two tripplers were maintained, found to subject complainant to undue prejudice and disadvantage in favor of such competitors. *Mayersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429.

**Localities:**

Chattanooga, Tenn.: Rate on molding sand from Ottawa, Ill., to, found not unduly prejudicial as compared with lower rate to Pittsburgh, Pa., Buffalo, N. Y., and other points in the same group as the transportation conditions obtaining from and to these points are dissimilar. *Rock Products Traffic League v. C., B. & Q. R. R. Co.*, 105.



**PREFERENCES AND PREJUDICES—Continued.****Localities—Continued.**

**Crowder, Miss.:** Rates on slack-barrel staves from, located on the Batesville Southwestern R. R., to interstate points, found not unreasonable, but unduly prejudicial to extent they exceed the group rates applicable from Batesville, Miss., the junction point of that carrier with the Illinois Central, and Charleston, Miss., a branch line point. Relationship of rates prescribed. *Hollingshead Co. v. Director General*, as Agent, 147.

**Gillespie, Ill.:** Rates on coal from complainant's mine at Gillespie to interstate destinations found unduly prejudicial to extent they exceed, except via St. Louis, Mo., the rates on like traffic from mines located on steam lines within the Springfield group, and via St. Louis to extent they exceed the rates from similar mines within the Belleville group, to the same destinations. Reparation denied. *Gillespie Coal Co. v. I. T. S.*, 335.

**Illinois mines:**

Rates on coal from the Third Vein, Springfield, Belleville, and Fulton-Peoria districts of Illinois to the northwest found not unreasonable but from the Third Vein, Springfield, and Belleville districts, to extent that they are less than 70 cents, 30 cents, and 10 cents per ton below the rates from the southern Illinois group, and from the Fulton-Peoria district to extent that they are less than 40 cents and 70 cents below the rates from the Springfield and southern Illinois districts, found unduly prejudicial. *Illinois Coal Cases*, 1920, 741 (750, 751-752).

Rates on coal from points in the so-called inner group of mines in Illinois to St. Louis, Mo., and from the Belleville district to points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, found not unreasonable but unduly prejudicial to extent that they are less than 22.5 cents per ton lower than the rates from mines in the southern Illinois group. *Id.* (754-755, 756-757).

**Iowa points:** Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on mill-work from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in rates between these points of origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

**Knoxville, Tenn.:**

Rates on blackstrap molasses, in tank-car loads, from New Orleans, La., Mobile, Ala., and Savannah, Ga., to, found unreasonable and unduly prejudicial as compared with rates to Nashville, Tenn., and other competing points. Reasonable rate prescribed for the future and reparation awarded. *Security Mills & Feed Co. v. Director General*, as Agent, 405.

Rates on cottonseed, peanut oil-cake, velvet-bean, soya-bean, palm-kernel, and copra meals from points of production in southern states to Knoxville not shown unreasonable but found unduly prejudicial to extent they exceed on a distance basis the rates on

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

## Knoxville, Tenn.—Continued.

like traffic to Nashville, Tenn., and to extent that they are higher in relation to the rates on cottonseed meal than the rates on like traffic to Nashville and Memphis, Tenn., Louisville, Ky., and Cincinnati, Ohio. *Reparation denied. Security Mills & Feed Co. v. Director General, as Agent, 657.*

Rates on mixed feed from Knoxville found not unreasonable; but as to points on and south of the Southern Ry. extending from Greensboro to Goldsboro, N. C., they are unduly prejudicial to extent they exceed on a distance basis the rates on like traffic from Nashville, Tenn., with a minimum differential of 4 cents lower than the latter rates, and to extent they exceed the lowest rate on like traffic from Memphis, Tenn., Louisville, Ky., or Cincinnati, Ohio; and as to points north of said Southern Ry., they are unduly prejudicial to extent they exceed the rates on like traffic from Nashville or Memphis, Tenn. *Id. (668).*

Lafayette, Ind.: Rates on sand and gravel from, to certain points in Illinois found unreasonable and unduly prejudicial to extent they exceed the rates from Attica, Ind., to the same Illinois destinations by more than differentials stated in the report. Measure of reasonable and nonprejudicial rates prescribed for the future. *Lafayette Gravel Co. v. C. & E. I. R. R. Co., 729.*

Minneapolis, Minn.: Rates on blackstrap molasses from New Orleans, La., Mobile, Ala., and Memphis, Tenn., to, found not unreasonable or unduly prejudicial as compared with rates to St. Louis, Mo., Chicago, Ill., Kansas City, Mo., Milwaukee, Wis., Omaha, Nebr., and points taking same rates. *Brooks Elevator Co. v. A. & W. Ry. Co., 469.*

Mount Hope Mineral R. R. points: Upon rehearing, maintenance by defendants of junction-point rates on coal to points on the Morristown & Erie R. R., while refusing to maintain such rates to points on the Mount Hope Mineral R. R., found not to result in undue prejudice as circumstances and conditions surrounding the movements are substantially different and there are no industries on the Morristown which compete with industries on the Mineral. Original report in 56 I. C. C., 158, reversed. *Empire Steel & Iron Co. v. Director General, 157.*

Kentucky mines: Rates on coal from western Kentucky to points in southeastern Missouri and northeastern Arkansas, found unduly prejudicial to extent they exceed rates from southern Illinois group by more than 25 cents per ton, the differential established in *Ohio Valley Coal Operators' Assn.*, 53 I. C. C., 148, for hauls involving a difference in distance corresponding closely to those here involved. *West Kentucky Coal Bureau v. I. C. R. R. Co., 686.*

Oklahoma points: Rates on canned condensed milk and pickles from Colorado producing points to Oklahoma found not unreasonable or unduly prejudicial; and on other canned goods from and to the same points found not unreasonable but unduly prejudicial to extent that they are upon a substantially higher basis, distance considered, than the rates on similar traffic to Kansas points; in other words, the ton-mile earnings under the rates to Kansas and Oklahoma should

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

be substantially equal. Reasonable relationship prescribed for the future and reparation denied. *Oklahoma State Shippers' Asso. v. Director General, as Agent, 433.*

**Pittsburgh & West Virginia Ry. points:** Interstate rates on bituminous coal from mines west of Pittsburgh, Pa., in the states of Pennsylvania and West Virginia, on the Pittsburgh & West Virginia Ry., to points north and east thereof, found not unreasonable but unduly prejudicial to extent they exceed by more than 10 cents per net ton the rates from other mines situated on other carriers in the vicinity of Pittsburgh. *Duquesne Coal & Coke Co. v. P. & W. V. Ry. Co., 759.*

**Pittsburgh, Pa.:** Rules under which a reconsignment charge was assessed on track grain held at Pittsburgh, Pa., for inspection and grading, while permitting reconsignment without charge at Cleveland, Ohio, and other competitive points in central territory under like circumstances, found unreasonable and unduly prejudicial. Reparation awarded. *Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 506.*

**Portland Ry., Light & Power Co., and Willamette Valley Southern Ry. points:** Refusal of defendants to maintain joint rates on lumber and forest products from, to certain interstate destinations, on the cost group basis, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. Reparation denied. *Cameron-Hogg Lumber Co. v. Director General, as Agent, 218.*

**San Francisco, Calif.:** Fact that demurrage and storage charges are imposed on export shipments at San Francisco, and not at north Pacific coast ports, does not of itself constitute undue prejudice. *Dodge Bros. v. Director General, as Agent, 689 (692).*

**Sapulpa and Sand Springs, Okla., and Hillsboro, Ill.:** Upon further hearing, original report 40 I. C. C., 291, rates on glass fruit jars and jelly glasses from, to Pacific coast terminals and certain intermediate points, found not unreasonable but unduly prejudicial in favor of competitors located at Muncie, Ind., Wheeling, W. Va., and Washington, Pa. Reparation denied. *Kerr & Co. v. S. S. Ry Co., 296.*

**Sherman, Ky.:** Combination rates on lumber from, a local point on the Big Sandy & Kentucky River Ry., to interstate destinations found not unreasonable or unduly prejudicial because in excess of 2 cents per 100 pounds over the rate from Dawkins, Ky., the junction point of that carrier with the C. & O. Ry., and while it appears that the Sherman to Dawkins factor of the through rate yielded somewhat high earnings they are not exorbitant when consideration given to the fact that the distance is short and the country traversed mountainous. *Burns & Knapp v. B. S. & K. R. Ry. Co., 345.*

**Tucumcari, N. Mex.:** Rate on wheat from, to Galveston, Tex., not shown unduly prejudicial as compared with rates from Melrose and Clovis, N. Mex., but found unreasonable as compared with lower rates to Galveston from contiguous Texas points and certain points in Colorado, Missouri, Illinois, and other states. Reasonable rate prescribed for the future. *New Mexico Corp. Comm. v. Director General, 352.*

## PREFERENCES AND PREJUDICES—Continued.

## Persons:

Defendant's refusal to construct a siding and switch connection at complainant's coal mine near Spangler, Pa., while granting the same to complainant's vendee, found not unduly prejudicial as complainants had disposed of their property, were no longer in the coal-mining business, and therefore had no competitive relationship with the vendee at the time the sidetrack and switch connection were furnished. *Schlicher v. Director General*, 181 (183).

Complainant contended that a certain coal company and defendant were so closely related that payment of refunds by the coal company to complainant's competitors was equivalent to payment by defendant and a departure from the published tariffs. *Held*: Since practices no longer exist and complainant submitted no proof of damage as the direct and proximate result of the alleged unjust discrimination or undue prejudice, question not decided. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211 (216).

Defendants' failure to make arrangements whereby complainant's mine located on and served only by the Missouri Pacific at Herrin, Ill., will be enabled to avail itself of the service, facilities, and rates of the C., B. & Q. R. R., found not to result in undue prejudice in favor of mines which are given a joint status by reason of their being served, under trackage agreements, by two or more lines. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259.

A trackage agreement might be the means of extending preferential treatment to one shipper to the undue prejudice of another. For instance, if a carrier extends its service by a trackage agreement to one mine on another line, it would be difficult, if not impossible to justify a refusal to accord similar treatment to another intermediate competing mine located on the track over which it operates under the trackage agreement. *Id.* (262).

Following *Ridge Coal Mining Co.*, 62 I. C. C., 259, failure of defendants to make arrangements whereby complainant's mines, located on and served only by single lines, will be enabled to avail themselves of the services, facilities, and rates of carriers whose rails do not reach them, not found to result in undue prejudice in favor of mines which are given a joint status by reason of their being served, under trackage agreements, by two or more lines. *Dering Mines Co. v. Director General*, 265.

Practice of carriers in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars not shown to result in undue prejudice to wholesale grocers or unduly to prefer the packers. *National Wholesale Grocers' Assn. v. Director General*, 375.

Various peddler-car rates and rules not shown unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing-house products in peddler cars in southwestern territory found unduly prejudicial to the wholesale grocers and unduly preferential of the meat packers in so far as said scale applies on lard substitutes, cottonseed, peanut, corn, and soya-bean cooking oils, canned meats, canned soups, chicken tamale, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients. *Id.* (408).

## PREFERENCES AND PREJUDICES—Continued.

## Persons—Continued.

Various rules applicable on mixed carloads of fresh meats and packing-house products found unjust, unreasonable, and unduly prejudicial to wholesale grocers in favor of the packers and reasonable and uniform mixing rules prescribed for the future. *Id.* (403).

## Spotting Cars:

Defendants' refusal to switch and spot cars at complainant's plant at Fordwick, Va., or to compensate complainant for performing such service, found not unreasonable or unduly prejudicial. Carrier never performed such service, rates were not originally constructed to include that service, and complainant has not shown that it is prejudiced by fact that some competitors at other points are given spotting service without charge in addition to line-haul rates. *Lehigh Portland Cement Co. v. Director General, as Agent*, 231.

Fact that competitors receive spotting service without charge in addition to the line-haul rate while complainant is not given such a service does not establish undue prejudice under section 3, as rates to and from the competitive points might include a charge for the spotting service while rates to and from point alleged to be prejudiced may not be so constructed. *Id.* (235).

## State and Interstate:

Charges for transportation of passengers in sleeping and parlor cars, required by state authority to be maintained within the state of Alabama, lower than corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Surcharge for Sleeping Car Service in Alabama*, 153.

Intrastate passenger fares of the Chicago, North Shore & Milwaukee R. R., an electric line, between points in Illinois, lower than the corresponding interstate fares between points in Illinois and points in Wisconsin, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Intrastate Fares of the C. N. S. & M. R. R.*, 188.

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential to intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges*, 440.

## PREPAYMENT.

Shipper made no request for establishment of lower rate to intermediate point under rule 77 of Tariff Circular 18-A, as carrier accepted prepaid charges based on lower rate to farther distant point. Subsequently the same rate established to both points, but consignee paid the difference between charges prepaid and those applicable and was reimbursed therefor by complainant. *Held*: Rate legally applicable found unreasonable to extent it exceeded lower rate subsequently established and reparation awarded. *De Jean v. Director General, as Agent*, 495.

**PRICE.**

On further hearing, reparation due to undue prejudice found to exist in original report, 56 I. C. C., 293, denied, as it was not shown that the prices of complainant's products were determined by competition; nor during period when they were fixed by the Government, on cost of production of those competitors; nor that they were lower than they would have been if competitors had not enjoyed the preferential basis of rates. *Canton Chamber of Commerce v. P. Co.*, 726.

**PRIVATE SIDING. See also SIDETRACKS.**

Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained, and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 99.

Refusal of defendants to furnish, upon reasonable request therefor, cars to complainant for the transportation of bituminous coal, while contemporaneously furnishing cars to other mine owners and operators, competitors of complainant and similarly located on private sidings on which two tipples were maintained, found to subject complainant to undue prejudice and disadvantage, to the undue preference and advantage of such competitors. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429.

Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates; nor will the Commission consider investments of complainant's competitors in mines served by a siding on which two tipples were installed as justifying carrier's refusal to furnish cars to complainant under substantially similar circumstances and conditions. *Id.* (431).

Siding agreement between Mountain Smokeless Coal Co. and defendant provided that use of the siding by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefor was not reasonable. *Held*: Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co., and the defendant permitted cars to be furnished at such sidings. *Id.* (432).

**PROFIT.**

In an action for damages due to refusal of carrier to construct a siding and switch connection at complainant's mine while granting the same to complainant's vendee. *Held*: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not the proximate result of the carrier's unlawful conduct. *Schlicher v. Director General*, 181 (185-186).

**PROFIT—Continued.**

In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. *Id.* (186).

Complainants seeking reparation because of undue prejudice upon theory that they were damaged in amounts measured by former differentials which they enjoyed under competing cities, notwithstanding assertion that competitors' prices were based upon lower production costs and that in meeting them they were compelled to shrink their profits, sometimes more than the amount of the differentials, *Held*: Theory contrary to binding rule in *International Coal Co. Case*, 230 U. S., 184, which requires affirmative proof of fact and amount of damage. *Kerr & Co. v. S. S. Ry Co.*, 296 (302).

**PROOF. See also BURDEN OF PROOF; EVIDENCE.**

To secure an award of reparation for damages suffered as the result of undue prejudice, both the fact and amount of damages must be proved. *Schlicher v. Director General*, 181 (185).

Charges for switching ground limestone, during federal control, between plants within the city of Alton, Ill., increased under general order No. 23 of the Director General and subsequently reduced. *Held*: Higher rate charged on shipments moving during interim found legally applicable and even if established in error, as contended by complainant, since no evidence offered to show that it was unreasonable, complaint dismissed. *Illinois Glass Co. v. Director General*, as Agent, 267.

Damages resulting from unlawful discrimination must be proved by the same sort of evidence as required in a court of law. The fact of damage can not be presumed from the existence of unjust discrimination or undue prejudice; nor is the amount that may have resulted therefrom necessarily measured by the difference in rates. Actual pecuniary damage and the amount thereof must be established with reasonable certainty by definite facts, without resort to conjecture, speculation, or unsupported opinion. *Kerr & Co. v. S. S. Ry. Co.*, 296 (299).

Complainants seeking reparation because of undue prejudice upon theory that they were damaged in amounts measured by former differentials which they enjoyed under competing cities, notwithstanding assertion that competitors' prices were based upon lower production costs and that in meeting them they were compelled to shrink their profits, sometimes more than the amount of the differentials, *Held*: Theory contrary to binding rule in *International Coal Co. Case*, 230 U. S., 184, which requires affirmative proof of fact and amount of damage. *Id.* (302).

On further hearing, reparation due to undue prejudice found to exist in original report, 56 I. C. C., 293, denied, as it was not shown that the prices of complainant's products were determined by competition; nor during period when they were fixed by the Government, on cost of production of those competitors; nor that they were lower than they would have been if competitors had not enjoyed the preferential basis of rates. *Canton Chamber of Commerce v. P. Co.*, 726.

**PUBLICATION.**

Where a mine is not actually upon the rails of a carrier and can not be considered as constructively upon the rails of that carrier under the terms of a trackage agreement, the publication of rates from that mine without

**PUBLICATION—Continued.**

the concurrence of the carrier upon whose rails it is situated is contrary to the Commission's tariff rules. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (263-264).

**PULLMAN SERVICE.**

Charges for transportation of passengers in sleeping and parlor cars required by state authority to be maintained within the state of Alabama, lower than corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Surcharge for Sleeping Car Service in Alabama, 153.

**RAIL AND WATER.**

Combination rail-and-water rates on cold-rolled steel bars from Beaver Falls, Pa., Cumberland, Md., and other points, to Galveston, Tex., via New York, N. Y., found unreasonable to extent that the water rate from New York exceeded the rate applied on merchant-steel bars. Measure of reasonable maximum rate prescribed and reparation awarded. *Texas Carnegie Steel Asso. v. Director General*, as Agent, 253.

Authority to continue to charge rates on cold-rolled steel bars from Beaver Falls, Pa., New York, N. Y., Cumberland, Md., and other points in Atlantic seaboard territory, to Galveston, via New York, N. Y., higher than on like traffic to points beyond Galveston, denied. *Id.* (257).

Proposed cancellation of joint rail-and-water rate on cement plaster from Southard, Okla., and points grouped therewith, to New York and Brooklyn, N. Y. (Gulf Line piers only), applicable via Galveston, Tex., leaving in effect higher combination rates, found not justified. *Rail-and-Water Rates on Plaster*, 685.

**RATE MAKING.**

Carload rates are almost always made upon the condition that the shipper and consignee will load and unload the freight, and upon the theory that the freight will not pass through the carrier's warehouse. *Dodge Bros. v. Director General*, as Agent, 689 (691).

**RAW MATERIAL.**

Molten steel cast into convenient shape for handling, whether square or octagonal in cross section, is an ingot and constitutes raw material out of which an article of some different size and shape is to be made. When cast in molds accurately fashioned from patterns to produce the particular sizes and shapes required for a specific article, it is a casting which comes from the mold in the same general form that it retains as a finished article. *Pacific Coast Steel Co. v. Director General*, as Agent, 207 (206).

**REASONABLENESS OF RATE. See MEASURE OF RATE.****REASONABLE REQUEST.**

Siding agreement between Mountain Smokeless Coal Co. and defendant provided that use of the siding by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefor was not reasonable. *Held*: Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co., and defendant permitted cars to be furnished at such other sidings. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (432).



**REBATES.**

Complainant contended that a certain coal company and defendant were so closely related that payment of refunds by the coal company to complainant's competitors was equivalent to payment by defendant and a departure from the published tariffs. *Held*: Since practices no longer exist and complainant submitted no proof of damage as the direct and proximate result of the alleged unjust discrimination or undue prejudice, question not decided. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211 (216).

**RECAPTURE OF EXCESS EARNINGS.**

The statutory provision for recapture of excess earnings from individual carriers clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management. *New England Divisions*, 518 (565).

**RECLAIM.**

Improper to assess a per diem charge against shipper as an item of cost in addition to a charge for maintenance when cars used are defendant carrier's property upon which no per diem charge accrued. *Wausau Box & Lumber Co. v. Director General, as Agent*, 56 (57).

Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. *B. & W. O. Ry. Co. v. P., C. O., & St. L. R. R. Co.*, 357 (361); *Tionesta Valley Ry.*, 478 (478); *Genesee & Wyoming R. R. Co.*, 680 (688).

One of the primary purposes of the per diem arrangement is to increase the use of freight equipment through expediting its movement and avoiding detention. Although the charge is intended to cover the cost of ownership, including maintenance, depreciation, taxes, interest, and other allocations incident to ownership, per diem savors of a penalty. *New England Divisions*, 518 (538).

Per diem has never been a factor specifically taken into account in the determination of divisions. If so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under joint rates. *Id.* (538).

**RECONSIDERATION. See also FURTHER ARGUMENT; FURTHER CONSIDERATION; FURTHER HEARING; REHEARING; SUPPLEMENTAL REPORT.**

Upon reconsideration, finding in original report, 58 I. C. C., 92, wherein it was held that the practice of the C. R. R. Co. of N. J., in refusing to absorb the switching charges of the East Jersey R. R. & Term. Co., on interstate traffic shipped by or consigned to complainant's industry, while absorbing such charges on like traffic when shipped by or consigned to independent industries served only by the East Jersey, was not unjustly discriminatory or unduly prejudicial, affirmed. *Tidewater Oil Co. v. Director General, as Agent*, 228.

Upon reconsideration, rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles from Lake Charles, La., to various points in Texas, found not unreasonable or

**RECONSIDERATION—Continued.**

discriminatory, and failure to provide that in assessing charges on mixed carloads of pine and cypress products each of the products in the car shall be charged at the rate applicable upon that particular product, was not unreasonable. Former report, *Independent Cooperative Lumber Co.*, 51 I. C. C., 557, reversed. *Monroe Shingle Co. v. Director General*, as Agent, 714.

**RECONSIGNMENT.**

Reconsignment charge of \$2 per car for the substitution of the name of a new consignee for the old one in the records of the carrier at billed destination and involving no further movement of the car, found legally applicable and not unreasonable or otherwise unlawful. *Detroit Produce Asso. v. Director General*, as Agent, 283.

Combination rate charged on a shipment which was twice reconsigned after leaving original billing point found applicable and not unreasonable as tariff authorizing reconsignment at the through rate provided that only one change in destination would be permitted after car left initial billing point. *Tuffi Bros. Pig Iron & Coke Co. v. Director General*, as Agent, 497.

Rules under which a reconsignment charge was assessed on track grain held at Pittsburgh, Pa., for inspection and grading, while permitting reconsignment without charge at Cleveland, Ohio, and other competitive points in central territory under like circumstances, found unreasonable and unduly prejudicial. Reparation awarded. *Pittsburgh Grain & Hay Exchange v. Director General*, as Agent, 506.

In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed such rules and charges were promptly canceled. *Held*: Establishment thereof was fully justified even though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. *Omaha Chamber of Commerce v. C., B. & Q. R. R. Co.*, 655.

**REDUCTION IN RATES.****By Carriers:**

Class rates on niter cake from Hercules, Calif., and Bacchus and Garfield Smelter, Utah, to McGill, Nev., exceeded lower commodity rates subsequently established. Reparation awarded. *Nevada Consolidated Copper Co. v. B. & G. Ry. Co.*, 22.

Class rate on ripe tomatoes from Jackson and St. Francisville, Ill., to Vincennes, Ind., found unreasonable as compared with lower commodity rates between other points in the same general territory for similar distances. Reparation awarded on basis of commodity rate from St. Francisville, subsequently established. *Dyer Packing Co. v. Director General*, as Agent, 28.

Because of regulations of the United States Fuel Administration complainant, located at Grayling, Mich., was obliged to procure its coal from Midland, Ind. Allegation that combination rates charged were unreasonable to extent they exceeded lower joint rate subsequently established, *Held*: Subsequent reduction of a rate does not, of itself, prove that the rate previously in force was unreasonable. *Du Pont de Nemours & Co. v. Director General*, as Agent, 89.

## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

- Combination rate legally applicable on wood-pulp board from Fairfield, Me., to Bushwick Station, Brooklyn, N. Y., found not unreasonable due to the subsequent establishment of a lower proportional rate for the factor, Fresh Pond, N. Y., to Bushwick Station. *United Paperboard Co. (Inc.) v. M. C. R. R. Co.*, 48.
- Combination rate on wood-pulp from Lockport, N. Y., to Thomson, N. Y., during federal control found not unreasonable or unduly prejudicial as compared with lower joint rate to Boston and other Massachusetts points, which lower rate was subsequently established to Thomson. *United Paperboard Co. (Inc.) v. N. Y. C. R. R. Co.*, 50.
- Lower rate was applicable in connection with all delivering lines other than that specified by shipper in bill of lading, but had shipments been routed over lines taking the lower rate, they would have been rerouted by the Director General under general order No. 1 over delivering line specified by shipper to relieve congestion at destination. *Held*: Rate charged found unreasonable to extent it exceeded lower rate which was subsequently made applicable via route of movement. Reparation awarded. *Midwest Refining Co. v. Director General*, as Agent, 185.
- Fourth-class rate on istle fiber from Laredo and Eagle Pass, Tex., to Peoria, Ill., found unreasonable as compared with lower commodity rates on other commodities possessing analogous transportation characteristics, and with lower commodity rates from Texas and other gulf ports to Peoria. Reparation awarded on basis of commodity rate subsequently established. *Peoria Cordage Co. v. Director General*, as Agent, 187.
- Fifth-class rate on secondhand plate-iron tanks, knocked down, from Watkins, Okla., to Port Arthur, Tex., found unreasonable to extent it exceeded lower commodity rate from Tulsa and Sand Springs, Okla., for greater distance, which lower rate was subsequently established from Watkins. Reparation awarded. *Mexican Gulf Oil Co. v. Director General*, as Agent, 141.
- Rates on bananas from New York harbor lighterage points, N. Y., to Providence, R. I., and Worcester, Mass., increased following *Proposed Increases in New England*, 49 I. C. C., 421, and under general order No. 28 of the Director General, not found unreasonable as compared with lower rate from Philadelphia, Pa., and Newark, N. J., farther distant points, or with lower rates subsequently established from such lighterage points. *Providence Fruit & Produce Exchange v. Director General*, as Agent, 179.
- Following *Du Pont de Nemours & Co.*, 48 I. C. C., 1 and 45 I. C. C., 479, sixth-class rate on sporadic shipments of refuse, bricks, dirt, excavated material, flue dust, sand, and slag, low grade commodities useless for any purpose other than filling in and grading, found unreasonable and reparation awarded on basis of commodity rate subsequently established. *Pusey & Jones Co. v. Director General*, as Agent, 291.
- Intrplant switching charges on shipments of coke moving during federal control from coke ovens to various points within the area of complainant's plant at Gary, Ind., found unreasonable where volume of movement was regular and heavy, the distance short,

**REDUCTION IN RATES—Continued.****By Carriers—Continued.**

the service performed by engines and crews constantly on duty, and the charges were in excess of other charges for similar services in the same general territory. Reparation awarded on basis of lower charges subsequently established. *Illinois Steel Co. v. Director General*, as Agent, 349.

Rate on crude petroleum from Junction City, Okla., to Lawton, Okla., during federal control, increased at various times by the Director General, found unreasonable as compared with rates to or from other refining points for longer distances. Reparation awarded on basis of lower rate subsequently established in connection with a general revision of rates on crude petroleum in the midcontinent field. *Lawton Refining Co. v. Director General*, as Agent, 480.

Shipper made no request for establishment of lower rate to intermediate point under rule 77 of Tariff Circular 18-A, as carrier accepted prepaid charges based on lower rate to farther distant point. Subsequently the same rate established to both points but consignee paid the difference between charges prepaid and those applicable and was reimbursed therefor by complainant. *Held*: Rate legally applicable found unreasonable to extent it exceeded lower rate subsequently established and reparation awarded. *De Jean v. Director General*, as Agent, 495.

Sixth-class rates on ice from Fleischmann's, N. Y., to Grand Gorge and Hobart, N. Y., during federal control, found unreasonable as compared with rates on other low-grade commodities for like and greater distances between neighboring points and with rates on the same commodity between other points for greater distances. Reparation awarded on basis of lower commodity rate subsequently established. *Sheffield Farms Co. v. Director General*, as Agent, 503.

Proposed reduction in the minimum weight on sugar from points in Colorado territory to various destinations, found not justified. The provisions of section 15a of the act as to efficient and economical management should be kept constantly in mind; the proposal seems inconsistent with the general campaign for increased carloading and efficiency; and to permit the reduction from Colorado territory without a corresponding reduction from other producing points would place the latter at a disadvantage. *Carload Minimum Weight on Sugar*, 510.

Upon further hearing, original report 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas are so related that disturbance of that relation would contravene the act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. *Intrastate Rates within the State of Texas*, 591.

Class rates on ice between points in western trunk line territory, state and interstate, and between St. Louis, Mo., or East St. Louis and Chicago, Ill., exceeded lower commodity rates subsequently established for like distances. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 618.

## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

A subsequent reduction of a rate is not necessarily an admission that former rate was unreasonable. But where rate situation is investigated and in consequence rates are temporarily established for longer distances which conform to those already in effect for less distances in the same territory, and after their expiration reestablished where any need therefor shown, these facts have weight in determining whether the higher rates were unreasonable. *Id.* (623).

Rate on gasoline motor cars, dead, on their own wheels, from Minneapolis, Minn., to San Diego, Calif., found unreasonable to extent it exceeded lower rate in opposite direction, which lower rate was subsequently established via route of movement after request therefor made. Reparation awarded. *San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co.*, 675.

Rates on soft coal from mines near Springfield, Ill., to Springfield, during federal control, found unreasonable as compared with lower switching charges maintained by other carriers in the same general vicinity for similar services. Reparation awarded on basis of rate subsequently established. *Citizens Coal Mining Co. v. Director General*, as Agent, 695.

## By Commission:

Rates on refined petroleum oils, in tank-car loads, from points in Kansas and Oklahoma to Rockford, Ill., found not unreasonable or unduly prejudicial as compared with rates to Chicago, Ill., and Milwaukee, Wis., but rate on crude, fuel, and gas oils, found unreasonable to extent it exceeded a rate 5 cents less than on refined oils. Reasonable rate prescribed and reparation awarded. *Emerson-Brantingham Co. v. Director General*, as Agent, 18.

Rates legally applicable on pine oil in tank-car loads from Pensacola, Fla., to Miami, Ariz., found unreasonable to extent it exceeded rate to Hayden, Ariz., a competing point. Reasonable rate prescribed and reparation awarded. *Miami Copper Co. v. Director General*, as Agent, 85.

Rates on sorghum sirup in barrels from Corinth, Calhoun City, and Lexington, Miss., to St. Louis, Mo., found unreasonable to extent it exceeded lower rate in effect from many other points in Mississippi. Reasonable rate from Lexington prescribed and reparation awarded. *Best Clymer Mfg. Co. v. Director General*, as Agent, 62.

Class E rates on gravel from Benton, Ark., to Shreveport, La., found unreasonable to extent they exceeded rates for similar distances prescribed in the *Shreveport Case*, 48 I. C. C., 312, 351, as subsequently increased under general order No. 28. Measure of reasonable maximum rates prescribed and reparation awarded. *Shreveport Producing & Refining Corp. v. Director General*, as Agent, 123.

Rates on hogs, in single and double deck cars, from South St. Paul, Minn., Sioux City, Iowa, South Omaha, Nebr., and South St. Joseph, Mo., to North Fort Worth, Tex., found unreasonable to extent that the rates from Kansas City and South St. Joseph, Mo., exceeded the distance scale of rates on live stock initiated by the Director General on January 20, 1919, based on the Shreveport scale and subject to the increases as authorized in *Increased Rates, 1920*, 58 I. C. C.

## REDUCTION IN RATES—Continued.

## By Commission—Continued.

220. Reparation awarded and reasonable rates prescribed for the future. *Swift & Co. v. Director General, as Agent*, 163.
- Rates on beef cattle and hogs from Kansas City, Mo.-Kans., and on hogs from Sioux Falls, S. Dak., to Oklahoma City, Okla., found unreasonable to extent they exceeded the distance rates initiated by the Director General on January 20, 1919, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. Reparation awarded and reasonable rates prescribed for the future. *Wilson & Co. v. Director General, as Agent*, 171.
- Class rates charged on automobile floor, toe, and running boards from Detroit, Mich., to Melrose, Calif., found unreasonable. Reparation awarded and reasonable maximum basis of rates on untrimmed boards prescribed for the future. *Chevrolet Motor Co. of Calif. v. Director General, as Agent*, 175.
- Rates on iron ore from producing points in Wisconsin and Michigan to Granite City, Ill., increased out of proportion to the increases to Pittsburgh, Pa., and Ironton, Ohio, following *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable. Reparation awarded and reasonable maximum rates prescribed. *St. Louis Coke & Chemical Co. v. A. & S. R. R. Co.*, 194.
- Class rate legally applicable on cotton seed from Henderson, N. C., to Dublin, Ga., found unreasonable as compared with lower commodity rates between other points, distance considered. Reasonable rate prescribed for the future and reparation awarded. *Empire Cotton Oil Co. v. Director General, as Agent*, 288.
- Rates on coke from Seaboard, N. J., to points in New England, New York, and New Jersey, via all-rail routes, found unreasonable and unduly prejudicial to extent they exceeded 80 per cent of the maximum distance scale herein prescribed for the future. Reparation awarded. *Seaboard By-Product Coke Co. v. Director General, as Agent*, 317 (328, 330).
- Rate on wheat from Tucumcari, N. Mex., to Galveston, Tex., not shown unduly prejudicial as compared with rates from Melrose and Clovis, N. Mex., but found unreasonable as compared with lower rates to Galveston from contiguous Texas points and certain points in Colorado, Missouri, Illinois, and other states. Reasonable rate prescribed for the future. *New Mexico Corp. Comm. v. Director General*, 352.
- Rates on fresh fruits and vegetables, in mixed carloads, from points in California to Phoenix, Ariz., found unreasonable to extent they exceeded rates equivalent to the corresponding class C rates from and to the same points. Reasonable maximum rates prescribed and reparation awarded. *Phoenix Chamber of Commerce v. Director General, as Agent*, 368.
- Rates on sugar from California points to Phoenix, Ariz., found unreasonable to extent they exceeded lower rate in effect to Tucson, Ariz. Reasonable rate prescribed for the future and reparation awarded. *Phoenix Chamber of Commerce v. Director General, as Agent*, 412.
- Rate on apples from Watsonville, Calif., to Phoenix, Ariz., found unreasonable to extent it exceeded lower rate from Watsonville to other points in Arizona and New Mexico for greater distances. Reasonable maximum rate prescribed and reparation awarded. *Phoenix Chamber of Commerce v. S. P. Co.*, 500.

**REDUCTION IN RATES—Continued.****By Commission—Continued.**

Rates on poplar and gum logs from South Carolina points to destinations in North Carolina found unreasonable for single-line application to extent they exceed the scale of rates herein prescribed, and for joint-line application over two or more lines not more than 2.5 cents per 100 pounds should be added to such scale. Reasonable maximum rates prescribed and reparation awarded in instances where lower combinations existed over routes of movement and where shipments were misrouted. *Southern Veneer Assn. v. A. C. L. R. R. Co.*, 669.

Rates applicable on ice from Carthage and Joplin, Mo., to Oklahoma City, Okla., found unreasonable to extent they exceeded rates based on a distance scale of commodity rates in effect between points in Kansas and Missouri on the one hand and points in Oklahoma on the other. Reasonable maximum rate prescribed and reparation awarded. *Capital Ice & Storage Co. v. St. L.—S. F. Ry. Co.*, 677.

Charges for interchanging interstate inbound c. l. traffic between defendants' lines at Downingtown, Pa., found unreasonable to extent they exceeded charges prescribed in *Thatcher Mfg. Co.*, 57 I. C. C., 244. Reasonable maximum charges prescribed for the future. *Miller Paper Co. v. P. R. R. Co.*, 705.

Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on millwork from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in rates between these points of origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

**REFUNDS.** See **REBATES**.

**REFUSAL TO ACCEPT.**

Rules and practices of American Ry. Express Co., whereunder shipments are refused unless the declared value thereof is marked on the package by the shipper found unlawful in the absence of proper provisions in schedules authorizing such action. *Viscose Co. v. American Ry. Express Co.*, 32.

Refusal of carrier to accept certain shipments when tendered for transportation after close of business on day preceding effective date of increased rates found not to have resulted in unreasonable or unlawful charges, and the acceptance of an occasional shipment from complainant after the closing hour found not to establish the existence of such a practice. *Transcontinental Freight Co. v. Director General*, as Agent, 127.

Carriers have the right to establish reasonable rules and regulations with respect to the time within which shipments shall be accepted for transportation. *Id.* (128).

**REHEARING.** See also **FURTHER ARGUMENT**; **FURTHER CONSIDERATION**; **FURTHER HEARING**; **RECONSIDERATION**; **SUPPLEMENTAL REPORT**.

Upon rehearing, maintenance by defendants of junction-point rates on coal to points on the Morristown & Erie R. R., while refusing to maintain such rates to points on the Mount Hope Mineral R. R., found not to result in undue prejudice as circumstances and conditions surrounding the movements are substantially different and there are no industries on the Morristown which compete with industries on the Mineral. Original report in 56 I. C. C., 153, reversed. *Empire Steel & Iron Co. v. Director General*, 157.

**RELATIONSHIP OF RATES.** *See also* ADJUSTMENT OF RATES; RELATIVE ADJUSTMENT.

Upon further argument, maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and eastern ports and interior eastern points, on the other. Original report, 57 I. C. C., 523, modified. *Corporation Commission of N. C. v. Director General*, 64.

Combination rates applicable to shipments of cotton from Marianna and Forrest City, Ark., cotton-compress points, to Helena, Ark., for compression and reshipment to New Orleans, La., and Boston, Mass., and points taking same rates, found not unreasonable with relation to the rates on like shipments from the same points of origin compressed at Memphis, Tenn., and reshipped to same destinations. *Keesee & Co. v. M. P. R. R. Co.*, 308.

Import rates lower than domestic rates are frequently, if not generally, influenced by considerations which are unrelated to, and have little if any bearing upon, the reasonableness *per se* of the domestic rates. *Nagase & Co. v. Director General*, as Agent, 422 (424).

Rates on canned condensed milk and pickles from Colorado producing points to Oklahoma found not unreasonable or unduly prejudicial; and on other canned goods from and to the same points found not unreasonable but unduly prejudicial to extent that they are upon a substantially higher basis, distance considered, than the rates on similar traffic to Kansas points; in other words, the ton-mile earnings under the rates to Kansas and Oklahoma should be substantially equal. Reasonable relationship prescribed for the future and reparation denied. *Oklahoma State Shippers' Asso. v. Director General*, as Agent, 483.

Upon further hearing, original report 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas are so related that disturbance of that relation would contravene the act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. *Intrastate Rates within the State of Texas*, 591.

Rates on cottonseed, peanut oil-cake, velvet-bean, soya-bean, palm-kernal, and copra meals from points of production in southern states to Knoxville, Tenn., not shown unreasonable but found unduly prejudicial to extent they exceed on a distance basis the rates on like traffic to Nashville, Tenn., and to extent that they are higher in relation to the rates on cottonseed meal than the rates on like traffic to Nashville and Memphis, Tenn., Louisville, Ky., and Cincinnati, Ohio. Reparation denied. *Security Mills & Feed Co. v. Director General*, as Agent, 657.

Rates on mixed feed from Knoxville, Tenn., found not unreasonable; but as to points on and south of the Southern Ry. extending from Greensboro to Goldsboro, N. C., they are unduly prejudicial to extent they exceed on a distance basis the rates on like traffic from Nashville, Tenn., with a minimum differential of 4 cents lower than the latter rates, and to extent they exceed the lowest rate on like traffic from Memphis, Tenn., Louisville, Ky., or Cincinnati, Ohio; and as to points north of said Southern Ry., they are unduly prejudicial to extent they exceed the rates on like traffic from Nashville or Memphis, Tenn. *Id.* (668).



**RELATIONSHIP OF RATES—Continued.**

Rates on coal from western Kentucky to points in southeastern Missouri and northeastern Arkansas found unduly prejudicial to extent they exceed rates from southern Illinois group by more than 25 cents per ton, the differential established in *Ohio Valley Coal Operators' Asso.*, 53 I. C. C., 148, for hauls involving a difference in distance corresponding closely to those here involved. *West Kentucky Coal Bureau v. I. C. R. R. Co.*, 686.

**RELATIVE ADJUSTMENT. See also ADJUSTMENT OF RATES; RELATIONSHIP OF RATES.**

Rates on coal from the Third Vein, Springfield, Belleville, and Fulton-Peoria districts of Illinois to the northwest found not unreasonable, but from the Third Vein, Springfield, and Belleville districts to extent that they are less than 70 cents, 30 cents, and 10 cents per ton below the rates from the southern Illinois group, and from the Fulton-Peoria district to extent that they are less than 40 cents and 70 cents below the rates from the Springfield and southern Illinois districts, found unduly prejudicial. *Illinois Coal Cases*, 1920, 741 (750, 751-752).

Rates on coal from points in the so-called inner group of mines in Illinois to St. Louis, Mo., and from the Belleville district to points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, found not unreasonable but unduly prejudicial to extent that they are less than 22.5 cents per ton lower than the rates from mines in the southern Illinois group. *Id.* (754-755, 756-757).

**RELATIVE RATES.****In General:**

Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. *National Fireproofing Co. v. Director General*, as Agent, 49 (55).

In determining the matter of reasonableness as well as of undue prejudice due consideration should be given to other rates charged on the same commodity by carriers serving the same or competing localities. *Security Mills & Feed Co. v. Director General*, as Agent, 405 (409).

Carney's point and Gibbstown, N. J.: Rates on sulphuric and muriatic acids, in tank-car loads or in carboys, from Jersey City, Newark, and Bayway, N. J., to, during federal control, found unreasonable to extent they exceeded rate for like distances from other New Jersey points in the same rate group to Wilmington, Del., Marcus Hook, Trainer, and Primos, Pa., and Baltimore, Md. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 681.

Chattanooga, Tenn.: Rate on melding sand from Ottawa, Ill., to, found not unreasonable or unduly prejudicial as compared with lower rate to Pittsburgh, Pa., Buffalo, N. Y., and other points in the same group as the transportation conditions obtaining from and to these points are dissimilar. *Rock Products Traffic League v. C., B. & Q. R. R. Co.*, 105.

Deering, Kans.: Rate legally applicable on intrastate shipments of slack coal, moving during federal control from Deering to Caney, Kans., found unreasonable as compared with lower rates from Pittsburg and other Kansas points to same destination. Reparation awarded. *Weir Smelting Co. v. Director General*, as Agent, 118.

**RELATIVE RATES—Continued.**

Granite City, Ill.: Rates on iron ore from producing points in Wisconsin and Michigan to, increased out of proportion to the increases to Pittsburgh, Pa., and Ironton, Ohio, following *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable. Reparation awarded and reasonable maximum rates prescribed. *St. Louis Coke & Chemical Co. v. A. & S. R. R. Co.*, 194.

Knoxville, Tenn.: Rates on blackstrap molasses, in tank-car loads, from New Orleans, La., Mobile, Ala., and Savannah, Ga., to, found unreasonable and unduly prejudicial as compared with rates to Nashville, Tenn., and other competing points. Reasonable rate prescribed for the future and reparation awarded. *Security Mills & Feed Co. v. Director General*, as Agent, 405.

Miami, Ariz.: Rates legally applicable on pine oil, in tank-car loads, from Pensacola, Fla., to, found unreasonable to extent it exceeded rate to Hayden, Ariz., a competing point. Reasonable rate prescribed and reparation awarded. *Miami Copper Co. v. Director General*, as Agent, 35.

Michigan points: Rate on pieces of iron and steel having value for remelting purposes only, billed as scrap iron from Ann Arbor, Mich., to Kalamazoo, Mich., during federal control, found not unreasonable as compared with lower rates from Grand Rapids, Mich., to Benton Harbor and Kalamazoo, Mich. *D'Arcy Spring Co. v. Director General*, as Agent, 129.

Minneapolis, Minn.: Rates on blackstrap molasses from New Orleans, La., Mobile, Ala., and Memphis, Tenn., to, found not unreasonable or unduly prejudicial as compared with rates to St. Louis, Mo., Chicago, Ill., Kansas City, Mo., Milwaukee, Wis., Omaha, Nebr., and points taking same rates. *Brooks Elevator Co. v. A. & W. Ry. Co.*, 469.

Mississippi points: Rates on sorghum sirup, in barrels, from Corinth, Calhoun City, and Lexington, Miss., to St. Louis, Mo., found unreasonable to extent they exceeded lower rate in effect from many other points in Mississippi. Reasonable rate from Lexington prescribed and reparation awarded. *Best Clymer Mfg. Co. v. Director General*, as Agent, 62.

Monroe district, La.: Rates on gasoline from points in the so-called Monroe district of Louisiana to various destinations found unreasonable to extent they exceed rates from Shreveport, La., to the same destinations. Measure of reasonable maximum rates prescribed and reparation awarded. *Southern Carbon Co. v. A. & L. M. Ry. Co.*, 733.

New York harbor lighterage points: Rates on bananas from, to Providence, R. I., and Worcester, Mass., increased following *Proposed Increases in New England*, 49 I. C. C., 421, and under general order No. 28 of the Director General, not found unreasonable as compared with lower rate from Philadelphia, Pa., and Newark, N. J., farther distant points, or with lower rates subsequently established from such lighterage points. *Providence Fruit & Produce Exchange v. Director General*, as Agent, 179.

Phoenix, Ariz.:

Rates on sugar from California points to, found unreasonable to extent they exceeded lower rate in effect to Tucson, Ariz. Reasonable rate prescribed for the future and reparation awarded. *Phoenix Chamber of Commerce v. Director General*, as Agent, 412.

**RELATIVE RATES—Continued.****Phoenix, Ariz.—Continued.**

Rate on apples from Watsonville, Calif., to, found unreasonable to extent it exceeded lower rate to other points in Arizona and New Mexico for greater distances. Reasonable maximum rate prescribed and reparation awarded. *Phoenix Chamber of Commerce v. S. P. Co.*, 500.

Rockford, Ill.: Rates on refined petroleum oils, in tank-car loads, from points in Kansas and Oklahoma to, found not unreasonable or unduly prejudicial as compared with rates to Chicago, Ill., and Milwaukee, Wis., but rate on crude, fuel, and gas oils found unreasonable to extent it exceeded a rate 5 cents less than on refined oils. Reasonable rate prescribed and reparation awarded. *Emerson-Brantingham Co. v. Director General*, as Agent, 18.

Sellersburg, Ind.: Combination rates on cement from, to points in Kentucky and Tennessee, both factors of which were increased by the Director General under general order No. 28, found unreasonable as compared with rates from Kosmosdale, Ky., and Mitchell, Ind., competing points. Reparation awarded on basis of rate subsequently established by addition of a single increase to the through rate. *Louisville Cement Co. v. Director General*, as Agent, 362.

Thomson, N. Y.: Combination rate on wood pulp from Lockport, N. Y., to, during federal control, found not unreasonable or unduly prejudicial as compared with lower joint rate to Boston and other Massachusetts points, which lower rate was subsequently established to Thomson. *United Paperboard Co. (Inc.) v. N. Y. C. R. R. Co.*, 59.

Tucumcari, N. Mex.: Rate on wheat from, to Galveston, Tex., not shown unduly prejudicial as compared with rates from Melrose and Clovis, N. Mex., but found unreasonable as compared with lower rates to Galveston from contiguous Texas points and certain points in Colorado, Missouri, Illinois, and other states. Reasonable rate prescribed for the future. *New Mexico Corp. Comm. v. Director General*, 352.

Vincennes, Ind.: Class rate on ripe tomatoes from Jackson and St. Francisville, Ill., to, found unreasonable as compared with lower commodity rates between other points in the same general territory for similar distances. Reparation awarded on basis of commodity rate from St. Francisville, subsequently established. *Dyer Packing Co. v. Director General*, as Agent, 28.

Watkins, Okla.: Fifth-class rate on secondhand plate-iron tanks, knocked down, from, to Port Arthur, Tex., found unreasonable to extent it exceeded lower commodity rate from Tulsa and Sand Springs, Okla., for greater distance, which lower rate was subsequently established from Watkins. Reparation awarded. *Mexican Gulf Oil Co. v. Director General*, as Agent, 141.

**REMEDY.**

The remedial provisions of paragraph (6), section 15, of the act, offer to carriers a source of relief to which they may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable." *New England Divisions*, 513 (562).

**REPARATION. See DAMAGES.**

**RESTORED RATES.**

Rates on crude petroleum, in tank-car loads, from the Burkburnett and Ranger districts, in Texas, and the Shreveport district, in Louisiana, to Oklahoma City, Okla., were the same as the rates to Cushing, Okmulgee, Sapulpa, and Tulsa, Okla. Following rate adjustment higher rates became effective to Oklahoma City which were subsequently corrected by a reduction. *Held*: Rates charged during interim not found unreasonable and complainant not shown damaged by alleged undue prejudice. *Choate Oil Corp. v. Director General*, as Agent, 98.

**RESTRICTED RATES.**

Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on millwork from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific coast as the disparity in rates between these points of origin clearly has effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721.

Contention that because commodities are of low grade, or because of other sources of supply, their transportation from particular points should be confined to local hauls, not sustained. Shippers may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and unjust discrimination. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729 (731).

**RESTRICTING MARKETS. See MARKETS.****RETROACTIVE.**

Under the provisions of paragraph 6, section 15, of the interstate commerce act as amended by the transportation act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition. *Diamond Alkali Co. v. F., P. & E. R. R. Co.*, 161 (165).

The Commission is not empowered to abrogate retroactively, by an award of reparation, contracts voluntarily entered into and fully performed on both sides, under which a subsidiary to a proprietary industry acts as agent for carriers, performing for them on their own rails a part of their transportation service, and to substitute therefor against the carriers' will another and different relationship. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248 (252).

**RETURN ON INVESTMENT.**

Record plainly indicated that carrier greatly overcapitalized and afforded no tangible basis upon which alone to determine what should be the measure of a reasonable system of charges on the basis of the value of its property devoted to the public use. *Fares of the Washington-Virginia Ry. Co.*, 200 (203).

Prescribing rates as a whole in rate groups necessarily means that the return will not be the same for each carrier. *New England Divisions*, 513 (526).

The public interest does not demand nor does the statute either expressly or by reasonable implication provide that the Commission may prescribe increased divisions to be received by certain carriers merely because other carriers participating in the joint rates, fares or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. *Id.* (562).

**RETURN ON INVESTMENT—Continued.**

Increased charges of the Leavenworth & Topeka R. R., for switching interstate shipments to and from team tracks at Leavenworth, Kans., found unreasonable to extent they exceed \$5 per car, but increased charges for switching interstate shipments between industries and connecting lines found justified as defendant's switching revenues do not afford more than a fair return on the value of the property devoted to the switching service over and above the cost of such service. *Leavenworth Chamber of Commerce v. Director General*, 697.

**REVENUE.** See EARNINGS; RECAPTURE OF EXCESS EARNINGS; TON-MILE REVENUE.

**REVERSAL.**

Original report, 55 I. C. C., 331, wherein intrastate shipments of silicate of soda moving during federal control were found misrouted and overcharged, overruled upon further hearing. Rates charged found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Boldt Paper Mills v. Director General*, as Agent, 471.

Upon reconsideration, rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles from Lake Charles, La., to various points in Texas, found not unreasonable or discriminatory, and failure to provide that in assessing charges on mixed carloads of pine and cypress products, each of the products in the car shall be charged at the rate applicable upon that particular product, was not unreasonable. Former report, *Independent Cooperative Lumber Co.*, 51 I. C. C., 557, reversed. *Monroe Shingle Co. v. Director General*, as Agent, 714.

**RIGHT OF WAY.**

Carriers' responsibility for the safety of freight stored upon right of way instead of in warehouses is not altered by fact that warehouses were congested. *Dodge Bros. v. Director General*, as Agent, 689 (691).

**ROUTES.**

Shipper specifically routed via higher rated route on account of better and more available facilities although lower rate in effect over two other routes. *Held*: Existence of lower rate over another route is insufficient to establish the unreasonableness of the rate applicable over route of movement. *Ingram-Day Lumber Co. v. L. & N. R. R. Co.*, 47.

Lower rate was applicable in connection with all delivering lines other than that specified by shipper in bill of lading, but had shipments been routed over lines taking the lower rate, they would have been re-routed by the Director General under general order No. 1 over delivering line specified by shipper to relieve congestion at destination. *Held*: Rate charged found unreasonable to extent it exceeded lower rate which was subsequently made applicable via route of movement. Reparation awarded. *Midwest Refining Co. v. Director General*, as Agent, 135.

In the absence of undue prejudice, a carrier can not be required to surrender traffic to connections at junctions which afford it hauls substantially less than the length of its line, when it offers the shortest route through other junctions, and affords as prompt service under normal conditions as can be obtained over any route. *Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co.*, 228 (229).

**RULES OF PRACTICE.** *See also PLEADING AND PRACTICE.*

Rule III, paragraph (m) of Rules of Practice, quoted. *Schlicher v. Director General*, 181 (184).

Complainants have no right to expect an award of damages upon an issue which they have not attempted to raise in the manner prescribed by the Commission's liberal rules of procedure; and as to which defendant has not been apprized in the usual course. *Id.* (185).

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object to receipt of such an affidavit further hearing may be requested regarding subject of reparation. *Phoenix Chamber of Commerce v. Director General*, as Agent, 412 (416); *Phoenix Chamber of Commerce v. S. P. Co.*, 500 (502); *Farley & Loetscher Mfg. Co. v. Director General*, as Agent, 721 (725).

**SALE.**

In an action for damages due to refusal of carrier to construct a siding and switch connection at complainants' mine while granting the same to complainant's vendee. *Held*: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not the proximate result of the carrier's unlawful conduct. *Schlicher v. Director General*, 181 (185-186).

**SCALE OF RATES.** *See DISTANCE RATES.***SCOTTDALE CONNECTING RAILROAD COMPANY.**

Found to be a plant facility of the United States Cast Iron Pipe & Foundry Co., and not a common carrier. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 839 (843).

History and description. *Id.* (840-841).

**SCRAP IRON.** *See JUNK.***SECTION 1.**

Refusal of carrier to construct a siding and switch connection at complainant's coal mine near Spangler, Pa., found not unreasonable or otherwise unlawful, as carrier's obligation under paragraph 9 of section 1 extends only to the furnishing of a "switch connection," and there was no sidetrack with which to connect. *Schlicher v. Director General*, 181. Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. *Id.* (187).

Under paragraph 21 of section 1 of the act the Commission may require a carrier to extend its line only when the extension is reasonably required in the interest of public convenience or when the expense involved will not impair the ability of the carrier to perform its duty to the public. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261-262).

Under paragraph 18 of section 1 of the act, the Commission is authorized to require carriers to file their rules and regulations with respect to car service, and it may direct that such rules and regulations be incorporated in the schedules showing rates, fares, and charges for transporta-

## SECTION 1—Continued.

tion and be subject to any or all of the provisions of the act relating thereto. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (276). While the Commission did not direct that certain car service rules be filed, as it may have required carriers to do under the provisions of section 1 of the act, it was expected that carriers promptly amend such rules to conform to the findings, and evidence same by filing copies with the Commission. *Id.* (276).

**Siding agreement** between Mountain Smokeless Coal Co. and defendant provided that use of the siding by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefore was not reasonable within the meaning of section 1. **Held:** Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co. and the defendant permitted cars to be furnished at such other sidings. *Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co.*, 429 (432).

A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15 of the act, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *New England Divisions*, 513 (560).

The remedial provisions of paragraph (6), section 15, of the act, offer to carriers a source of relief to which they may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable." *Id.* (562).

The Commission is not vested with discretion by virtue of which the mandate of section 1, paragraph (4), of the act, that divisions as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable might be made ineffective by administrative or judicial action. *Id.* (562).

In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed such rules and charges were promptly cancelled. **Held:** Establishment thereof was fully justified even though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. *Omaha Chamber of Commerce v. C., B. & Q. R. R. Co.*, 655.

SECTION 2. *See also* DISCRIMINATION.

While absence of competition does not prevent a finding of unjust discrimination under section 2, to sustain such a finding it must appear that the transportation services are like and contemporaneous and are performed under substantially similar circumstances and conditions, and that the property transported is like traffic. But it is the line haul to which section 2 primarily relates, and if the movement is either over a different line or, if over the same line, for a substantially different haul, the transportation service is substantially dissimilar. *Tidewater Oil Co. v. Director General*, as Agent, 226 (227).

**SECTION 2—Continued.**

Potato starch and potato flour found to be like kinds of traffic within the meaning of that term as employed in section 2 of the act, and rates on potato starch found unjustly discriminatory to extent they exceeded the rates between the same points on potato flour. *Nagase & Co. v. Director General, as Agent*, 422 (424).

**SECTION 3. See also PREFERENCES AND PREJUDICES.**

Fact that competitors receive spotting service without charge in addition to the line-haul rate while complainant is not given such a service, does not establish undue prejudice under section 3, as rates to and from the competitive points might include a charge for the spotting service while rates to and from point alleged to be prejudiced may not be so constructed. *Lehigh Portland Cement Co. v. Director General, as Agent*, 281 (285).

**SECTION 4. See LONG AND SHORT HAUL; THROUGH AND LOCAL.****SECTION 15. See also ALLOWANCES.**

Where short line found not to be a common carrier is not to say that it is unlawful for trunk lines to pay reasonable compensation to such short line as its agent, or a reasonable allowance to the industry, under section 15 of the act, for performing through its industrial railroad any portion of the service customarily included in the line-haul rates which they do not elect to do for themselves. *Wyandotte Terminal R. R. Co.*, 1 (5).

Under the provisions of paragraph 6, section 15, of the interstate commerce act as amended by the transportation act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition. *Diamond Alkali Co. v. F., P. & E. R. R. Co.*, 161 (165).

Allegation that increased classification rating is illegal because filed with the Commission before January 1, 1920, without prior approval as then required by section 15, *Held*: Fifteenth section applications were not filed to cover consolidated classification No. 1, and no approval from the Commission under that section was necessary as to lines under federal control. *Globe Soap Co. v. Director General, as Agent*, 307 (311).

A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15 of the act, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *New England Division*, 518 (560).

Under paragraph (6), section 15, of the act, the Commission is authorized to prescribe just, reasonable, and equitable divisions. The Commission's jurisdiction attaches irrespective of the manner in which divisions theretofore prevailing were established, its duty to prescribe arising when, after full hearing, it is of opinion that the divisions brought in issue "are or will be unjust, unreasonable, inequitable, or unduly prejudicial or preferential as between the carriers parties thereto." *Id.* (560-561).

Under the provisions of section 15 no one of the elements which the Commission is required to consider is predominant; all are to be considered *per se* and relatively in the determination of just, reasonable, and equitable divisions "to be received by the several carriers." *Id.* (561).



**SECTION 15—Continued.**

Words "without regard to the mileage haul" in paragraph (6), section 15, of the act, do not forbid consideration of element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance, in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. *Id.* (561).

The remedial provisions of paragraph (6), section 15, of the act, offer to carriers a source of relief to which they may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable." *Id.* (562).

**SECTION 15a.**

Proposed reduction in the minimum weight on sugar from points in Colorado territory to various destinations, found not justified. The provisions of section 15a of the act as to efficient and economical management should be kept constantly in mind; the proposal seems inconsistent with the general campaign for increased carloading and efficiency; and to permit the reduction from Colorado territory without a corresponding reduction from other producing points would place the latter at a disadvantage. *Carload Minimum Weight on Sugar*, 510.

**SHEFFIELD & TIONESTA RAILWAY COMPANY.**

Found to be a common carrier subject to the act. *Sheffield & Tionesta Ry. Co.*, 710.

History and description of. *Id.* (710-711).

Has exercised the power of eminent domain. *Id.* (712).

**SHIPPING BOARD.**

Contention that shipments were detained at port as result of action of the government in commandeering vessels on which space engaged, and that no demurrage should have been assessed during time when the lines of defendant carriers were being operated by a federal agency, not sustained, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General*, as Agent, 689 (690-691).

**SHORT HAUL.**

In the absence of undue prejudice, a carrier can not be required to surrender traffic to connections at junctions which afford it hauls substantially less than the length of its line, when it offers the shortest route through other junctions, and affords as prompt service under normal conditions as can be obtained over any route. *Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co.*, 228 (229).

Prayer for establishment of through routes and joint rates denied where not shown necessary or desirable in the public interest, and its establishment would replace a one-line movement by a joint-line haul involving the delay and expense of three terminal interchanges and force the originating carrier to short haul itself. *Phoenix Chamber of Commerce v. Director General*, as Agent, 368 (373-374); *Phoenix Chamber of Commerce v. Director General*, as Agent, 412 (416).

**SHORT HAUL—Continued.**

Failure of defendants to provide for absorption of charges for interchanging interstate inbound c. l. traffic at Downingtown, Pa., or to interchange outbound traffic at that point and provide charges therefor, not found unreasonable, discriminatory, or unduly prejudicial. If such switching arrangements were established carrier would be required to hand traffic over to its competitor and short haul itself. *Miller Paper Co. v. P. R. R. Co.*, 705.

**SHORT-HAUL TRAFFIC.**

Minimum charge of \$15 per car assessed on intrastate shipments of clay found unreasonable to extent it exceeded charges based on rate and actual weight of shipments, not subject to the minimum charge. Commodity was of low grade, movements were regular and for short distances, and the physical condition of defendant's road would not permit the handling of cars sufficiently loaded to produce the minimum charge. Reparation awarded. *Dickey v. Director General*, as Agent, 223.

Intrajoint switching charges on shipments of coke moving during federal control from coke ovens to various points within the area of complainant's plant at Gary, Ind., found unreasonable where volume of movement was regular and heavy, the distance short, the service performed by engines and crews constantly on duty, and the charges were in excess of other charges for similar services in the same general territory. Reparation awarded on basis of lower charges subsequently established. *Illinois Steel Co. v. Director General*, as Agent, 349.

Rates on soft coal from mines near Springfield, Ill., to Springfield during federal control found unreasonable as compared with lower switching charges maintained by other carriers in the same general vicinity for similar services. Reparation awarded on basis of rate subsequently established. *Citizens Coal Mining Co. v. Director General*, as Agent, 695.

**SHORT LINE.**

There is no substantial difference between the cost of service from points on short-line connections not operated by trunk lines and that from points on branch lines. *Hollingshead Co. v. Director General*, as Agent, 147 (149).

*Allegheny & South Side Ry. Co.* found not to be a common carrier subject to the act. *Allegheny & South Side Ry. Co. v. Director General*, as Agent, 248 (252).

*Scottdale Connecting R. R. Co.* found to be a plant facility of the United States Cast Iron Pipe & Foundry Co., and not a common carrier. *U.S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 339 (343).

The following short lines found to be common carriers subject to the act, and following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between them and their trunk line connections with respect to use and detention of foreign cars and basis for settlement of accrued charges, prescribed:

*Benwood & Wheeling Connecting Ry. Co. B. & W. C. Ry. Co. v. P., C. C. & St. L. R. R. Co.*, 357.

*Genesee & Wyoming R. R. Co.*, 680.

*Tionesta Valley Ry. Co.*, 473.

**SHORT LINE—Continued.**

The following short lines found to be common carriers subject to the act which may lawfully participate in joint rates or have their charges on interstate shipments absorbed under appropriate tariff provisions by roads having the line haul:

Sheffield & Tionesta Ry. Co., 710.

Wyandotte Terminal R. R. Co., 1 (5).

**SHORT-LINE DISTANCE. See also DISTANCE.**

Duluth, Minn., to Spokane, Wash., is 1,465 miles; from Memphis, Tenn., to Spokane, 2,138 miles. Pig Iron from Southeastern Points to Utah, 7 (8).

**SIDETRACKS. See also PRIVATE SIDING.**

Refusal of carrier to construct a siding and switch connection found not unreasonable or otherwise unlawful, as carrier's obligation under paragraph 9 of section 1 extends only to the furnishing of a "switch connection," and there was no sidetrack with which to connect. *Schlicher v. Director General*, 181.

Defendant's refusal to construct a siding and switch connection while granting the same to complainant's vendee, found not unduly prejudicial as complainants had disposed of their property, were no longer in the coal-mining business, and therefore had no competitive relationship with the vendee at the time the sidetrack and switch connection were furnished. *Id.* (188).

Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. *Id.* (187).

**SLEEPING CAR SERVICE. See PULLMAN SERVICE.****SOLVENCY.**

Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. Commission's orders for reparation require payment of the sum found due and run against all defendants. *United Paperboard Co. (Inc.) v. S. Ry. Co.*, 60 (61).

**SPECIAL SERVICE.**

Minimum charge of \$15 per car under general order No. 28, plus additional charges for special train service, assessed on intrastate shipments of water, in tank-car loads, moving during federal control between points in Indiana, found unreasonable to extent they exceeded \$9 per car for distances of 15 miles and less and \$11.50 per car for distances in excess of 15 miles, with no additional charge for extra train service, prescribed in *Illinois Coal Traffic Bureau*, 56 I. C. C., 426. Reparation awarded. *Rowland Power Consolidated Collieries Co. v. Director General*, as Agent, 101.

**SPORADIC MOVEMENT.**

Owing to extraordinary conditions complainant was unable to obtain sufficient coal from the Westmoreland district of Pennsylvania, from which its supply is ordinarily obtained, and shipments were made from certain points in the Mercer-Butler and Pittsburgh districts to Perth Amboy, Natco, and Port Murray, N. J. *Held*: Combination rates charged, while higher, distance considered, than those prevailing from near-by points to same destinations or points in that vicinity, over the same or

**SPORADIC MOVEMENT—Continued.**

other routes, found not unreasonable and establishment of joint rates found not warranted. *National Fireproofing Co. v. Director General, as Agent, 49.*

Minimum class rate legally applicable on sporadic intrastate shipments of copra, moving during federal control from the Vandam warehouse at Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., found not unreasonable as compared with lower commodity rates applying from and to stations between which there is a regular way-freight train service and a regular switching movement, conditions which do not obtain in connection with traffic from or to the Vandam warehouse. *Proctor & Gamble Mfg. Co. v. Director General, as Agent, 116.*

Rate on a sporadic shipment of kainit from Norfolk, Va., to Charleston, S. C., found not unreasonable or otherwise unlawful as compared with lower rate on certain fertilizer materials between the same points. *Planters Fertilizer & Phosphate Co. v. Director General, as Agent, 131.*

Following *Du Pont de Nemours & Co.*, 43 I. C. C., 1, and 45 I. C. C., 479, sixth-class rate on sporadic shipments of refuse, bricks, dirt, excavated material, flue dust, sand, and slag, low-grade commodities useless for any purpose other than filling in and grading, found unreasonable and reparation awarded on basis of commodity rate subsequently established. *Pusey & Jones Co. v. Director General, as Agent, 291.*

Proposed cancellation of joint commodity rates on mussel or clam shells from Cloverport and other Kentucky points on the Ohio River to various destinations, leaving in effect higher combination rates, found justified. Only one carload of uncut shells has moved from Cloverport since 1918, and probability of further movement depends entirely upon market conditions. *Clams and Mussel Shells from Kentucky Points, 366.*

Class rates applicable on secondhand sugar-making machinery from Waverly, Wash., to Gunnison, Utah, found not unreasonable as compared with lower commodity rates on mining machinery in the same general territory. Shipments were unusual or sporadic and were properly subject to the class-rate basis, and it was not shown that the classification rating was improper. *Gunnison Valley Sugar Co. v. D. & R. G. R. R. Co., 483.*

Any-quantity rate on a sporadic shipment of steel horse collars from Davenport, Iowa, and Rock Island, Ill., to Minnesota Transfer, Minn., found not unreasonable as compared with rate on iron hames and cloth covered collars of which there is a considerable c. l. movement. *Bartlett & Zimmerman v. Director General, as Agent, 629.*

**SPOTTING CARS.**

Where tracks within a plant are safe and practicable for standard power and equipment and the spotting service is not complex, the receipt and delivery of cars at customary places for loading and unloading within the plant is a service which is covered by the line haul rates. *Diamond Alkali Co. v. F., P. & E. R. R. Co., 161 (164).*

Defendants' refusal to switch and spot cars at complainant's plant at Fordwick, Va., or to compensate complainant for performing such service, found not unreasonable or unduly prejudicial. Carrier never performed such service, rates were not originally constructed to include that service, and complainant has not shown that it is prejudiced by fact that some competitors at other points are given spotting service without charge in addition to line-haul rates. *Lehigh Portland Cement Co. v. Director General, as Agent, 231.*

## SPOTTING CARS—Continued.

Fact that competitors receive spotting service without charge in addition to the line-haul rate while complainant is not given such a service, does not establish undue prejudice under section 3, as rates to and from the competitive points might include a charge for the spotting service while rates to and from point alleged to be prejudiced may not be so constructed. *Id.* (235).

Failure of trunk lines to make an allowance to complainant or its plant facility, Scottsdale Connecting R. R. Co., for performing interchange switching and spotting service at complainant's plant at Scottsdale, Pa., found not to have resulted in unreasonable, discriminatory, or unduly prejudicial rates. Complainant does not demand, nor has it ever demanded, performance of the service by the trunk lines, preferring to do the work itself and it would not be possible for the trunk lines to operate within the plant with available equipment because of excessive track curvature. *U. S. Cast Iron Pipe & Foundry Co. v. Director General, as Agent*, 839.

## STATE AND INTERSTATE.

Charges for transportation of passengers in sleeping and parlor cars required by state authority to be maintained in the state of Alabama, lower than corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Surcharge for Sleeping Car Service in Alabama*, 153.

In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. *Schlicher v. Director General*, 181 (186).

Intrastate passenger fares of the Chicago, North Shore & Milwaukee R. R., an electric line, between points in Illinois, lower than the corresponding interstate fares between points in Illinois and points in Wisconsin, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Intrastate Fares of the C., N. S. & M. R. R.*, 188.

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 502, modified in the interest of clarity, by striking therefrom the corporate titles of carriers not engaged in the transportation of passengers in interstate commerce. *Minnesota Fares and Charges*, 198.

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state of Kansas, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *Kansas Rates, Fares, and Charges*, 440.

Upon further hearing, original report 60 I. C. C., 421, interstate and intrastate rates on cotton linters within Texas are so related that disturbance of that relation would contravene the act, and reduction of the intrastate rates on cotton linters by restoring the former 75 per cent rate relation to flat cotton moving in interstate or foreign commerce would result in unjust discrimination against interstate and foreign commerce. *Intrastate Rates within the State of Texas*, 591.

## STATE COMMISSION.

Carriers filed rates for removal of undue prejudice found to exist in original report, 59 I. C. C., 321, wherein no order was entered, but state commission suspended rates filed for intrastate application. Upon further consideration, rates filed by carriers found just and reasonable and order entered giving effect to conclusions reached in original report. *Public Service Commission of Oregon v. Director General*, 633.

STATE RATES. *See also* STATE AND INTERSTATE.

Minimum charge of \$15 per car under general order No. 28, assessed on shavings and sawmill refuse from Wausau, Wis., to Brokaw, and Rothschild, Wis., moving during federal control, found unreasonable to extent it exceeded charges contemporaneously in effect at rates per 100 pounds. Reparation awarded. *Wausau Box & Lumber Co. v. Director General*, as Agent, 56.

Combination rate on wood pulp from Lockport, N. Y., to Thomson, N. Y., during federal control, found not unreasonable or unduly prejudicial as compared with lower joint rate to Boston and other Massachusetts points, which lower rate was subsequently established to Thomson. *United Paperboard Co. (Inc.) v. N. Y. C. R. R. Co.*, 59.

Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained and, since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 99.

Under section 206 (c) of the transportation act, 1920, the Commission has jurisdiction over intrastate shipments moving on and after January 1, 1918. *Id.* (99).

Minimum charge of \$15 per car under general order No. 28, plus additional charges for special train service, assessed on intrastate shipments of water, in tank-car loads, moving during federal control between points in Indiana, found unreasonable to extent they exceeded \$9 per car for distances of 15 miles and less and \$11.50 per car for distances in excess of 15 miles, with no additional charge for extra train service, prescribed in *Illinois Coal Traffic Bureau*, 56 I. C. C., 426. Reparation awarded. *Rowland Power Consolidated Collieries Co. v. Director General*, as Agent, 101.

Rate legally applicable on intrastate shipments of slack coal, moving during federal control from Deering, Kans., to Caney, Kans., found unreasonable as compared with lower rates from Pittsburgh and other Kansas points to same destination. Reparation awarded. *Weir Smelting Co. v. Director General*, as Agent, 113.

Minimum class rate legally applicable on sporadic intrastate shipments of copra, moving during federal control from the Vandam warehouse at Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., found not unreasonable as compared with lower commodity rates applying from and to stations between which there is a regular way-freight train service and a regular switching movement, conditions which do not obtain

## STATE RATES—Continued.

in connection with traffic from or to the Vandam warehouse. *Procter & Gamble Mfg. Co. v. Director General*, as Agent, 116.

Rate on pieces of iron and steel having value for remelting purposes only, billed as scrap iron from Ann Harbor, Mich., to Kalamazoo, Mich., during federal control, found not unreasonable as compared with lower rates from Grand Rapids, Mich., to Benton Harbor and Kalamazoo, Mich. *D'Arcy Spring Co. v. Director General*, as Agent, 129.

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control. *Id.* (129).

Minimum charge of \$15 per car assessed on intrastate shipments of clay found unreasonable to extent it exceeded charges based on rate and actual weight of shipments, not subject to the minimum charge. Commodity was of low grade, movements were regular and for short distances, and the physical condition of defendant's road would not permit the handling of cars sufficiently loaded to produce the minimum charge. Reparation awarded. *Dickey v. Director General*, as Agent, 223.

Charges for switching ground limestone, during federal control, between plants within the city of Alton, Ill., increased under general order No. 28 and subsequently reduced. *Held*: Higher rate charged on shipments moving during interim found legally applicable and even if established in error, as contended by complainant, since no evidence offered to show that it was unreasonable, complaint dismissed. *Illinois Glass Co. v. Director General*, as Agent, 287.

Rates on petroleum products moving during federal control from Joplin, Mo., to destinations in the same state, as increased on June 25, 1918, under general order No. 28 and subsequently readjusted by substitution of a flat increase of 4.5 cents in lieu of 25 per cent, found not unreasonable. *Wilhoit Oil Co. v. Director General*, as Agent, 313.

Rate on crude petroleum from Junction City, Okla., to Lawton, Okla., during federal control, increased at various times by the Director General, found unreasonable as compared with rates to or from other refining points for longer distances. Reparation awarded on basis of lower rate subsequently established in connection with a general revision of rates on crude petroleum in the midcontinent field. *Lawton Refining Co. v. Director General*, as Agent, 480.

Following *Atlantic Refining Co.*, 58 I. C. C., 46, rate on crude petroleum from Drace, Okla., to Sapulpa, Okla., during federal control, increased at various times by the Director General, and subsequently reduced, found not unreasonable, as the fluctuations were due to a general readjustment of rates on petroleum and its products throughout the entire country. *Sapulpa Refining Co. v. Director General*, as Agent, 493.

Sixth-class rates on ice from Fleischmann's, N. Y., to Grand Gorge and Hobart, N. Y., during federal control, found unreasonable as compared with rates on other low-grade commodities for like and greater distances between neighboring points and with rates on the same commodity between other points for greater distances. Reparation awarded on basis of lower commodity rate subsequently established. *Sheffield Farms Co. v. Director General*, as Agent, 503.

**STATE RATES—Continued.**

Rates on sulphuric and muriatic acids, in tank-car loads or in carboys, from Jersey City, Newark, and Bayway, N. J., to Gibbstown and Carneys Point, N. J., during federal control, found unreasonable to extent they exceeded rate for like distances from other New Jersey points in the same rate group to Wilmington, Del., Marcus Hook, Trainer, and Primos, Pa., and Baltimore, Md. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 631.

Evidence on further hearing, original report 60 I. C. C., 337, held not to warrant a change in rates on logs between points in Indiana on intrastate traffic, or a modification of the order in that proceeding relative to rates on coal applicable intrastate in Indiana for distances of less than 30 miles. *Indiana Rates, Fares, and Charges*, 648.

Rates on soft coal from mines near Springfield, Ill., to Springfield, during federal control, found unreasonable as compared with lower switching charges maintained by other carriers in the same general vicinity for similar services. Reparation awarded on basis of rate subsequently established. *Citizens Coal Mining Co. v. Director General*, as Agent, 695.

**STATUTE OF LIMITATIONS. See LIMITATIONS OF ACTION.**

**STIPULATION.**

In a stipulation of record entered into between the parties, by which a hearing was expressly waived, it was agreed that reparation should be awarded to basis found reasonable in a former decision of the Commission involving similar shipments. *Du Pont de Nemours & Co. v. Director General*, 109.

**STORAGE.**

Vessel on which space engaged commandeered by government while shipments in transit. While effort was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. *Dodge Bros. v. Director General*, as Agent, 689.

A storage charge equivalent to a demurrage charge is not, *ipso facto*, unreasonable. *Id.* (691).

Carrier's responsibility for the safety of freight stored upon right of way instead of in warehouses is not altered by fact that warehouses were congested. *Id.* (691).

Fact that demurrage and storage charges on export shipments are imposed at one port, and not at others, does not of itself constitute undue prejudice. *Id.* (692).

**STREET RAILWAY.**

Chicago, North Shore & Milwaukee R. R., found to be a common carrier subject to the act, and in its interurban operations, both state and interstate, is not a "street railway" in the common acceptance of that term, or as that term has been construed by the Supreme Court and this Commission. *Interstate Fares of the C., N. S. & M. R. R.*, 188 (193).

**SUBSEQUENTLY ESTABLISHED RATES. See REDUCTION IN RATES (BY CARRIERS).**

62 I. C. C.



**SUPPLEMENT.**

Contention that as the supplement to general order No. 28, issued June 12, 1918, published specific increases on coal authorized by the general order, but not the rule concerning the disposition of fractions, such rates were excepted from the application of that rule, *Held*: Not sustained by the provisions of the supplement, and if it were the fact would not be controlling. *Tallulah Cotton Oil Co. v. Director General*, as Agent, 41.

**SUPPLEMENTAL REPORT.** *See also* FURTHER ARGUMENT; FURTHER CONSIDERATION; FURTHER HEARING; RECONSIDERATION; REHEARING.

Carriers filed rates for removal of undue prejudice found to exist in original report, 59 I. C. C., 321, wherein no order was entered, but state commission suspended rates filed for intrastate application. Upon further consideration, rates filed by carriers found just and reasonable and order entered giving effect to conclusions reached in original report. *Public Service Commission of Oregon v. Director General*, 633.

Upon supplemental report, preceding supplemental report, 60 I. C. C., 595, amount of reparation awarded to certain complainants on shipments of pig iron from points in Alabama and Tennessee to Ohio River crossings and points in c. f. a. territory, modified. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 646.

**SURCHARGE.** *See* PULLMAN SERVICE.**SUSPENSION.**

Carriers filed rates for removal of undue prejudice found to exist in original report, 59 I. C. C., 321, wherein no order was entered, but state commission suspended rates filed for intrastate application. Upon further consideration, rates filed by carriers found just and reasonable and order entered giving effect to conclusions reached in original report. *Public Service Commission of Oregon v. Director General*, 633.

**SWITCH CONNECTION.**

Refusal of carrier to construct a siding and switch connection found not unreasonable or otherwise unlawful, as carrier's obligation under paragraph 9 of section 1 extends only to the furnishing of a "switch connection," and there was no sidetrack with which to connect. *Schlicher v. Director General*, 181.

Defendant's refusal to construct a siding and switch connection while granting the same to complainant's vendee, found not unduly prejudicial as complainants had disposed of their property, were no longer in the coal-mining business, and therefore had no competitive relationship with the vendee at the time the sidetrack and switch connection were furnished. *Id.* (183).

Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. *Id.* (187).

**SWITCHING.** *See also* INTERCHANGE OF TRAFFIC; SPOTTING CARS.

Proposal of the Hocking Valley Ry., to reduce the amount of its absorption of switching charges of other carriers on c. l. traffic at Toledo, Ohio, resulting in increased through charges to the shipper found not justified. *Absorption of Switching Charges at Toledo*, 30.

**SWITCHING—Continued.**

The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates*, 1920, 58 I. C. C., 220. Id. (31).

Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained, and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 99.

Upon reconsideration, finding in original report, 58 I. C. C., 92, wherein it was held that the practice of the C. R. R. Co. of N. J., in refusing to absorb the switching charges of the East Jersey R. R. & Term. Co., on interstate traffic shipped by or consigned to complainant's industry, while absorbing such charges on like traffic when shipped by or consigned to independent industries served only by the East Jersey, was not unjustly discriminatory or unduly prejudicial, affirmed. *Tidewater Oil Co. v. Director General*, as Agent, 226.

Defendants' refusal to switch and spot cars at complainant's plant at Fordwick, Va., or to compensate complainant for performing such service, found not unreasonable or unduly prejudicial. Carrier never performed such service, rates were not originally constructed to include that service, and complainant has not shown that it is prejudiced by fact that some competitors at other points are given spotting service without charge in addition to line-haul rates. *Lehigh Portland Cement Co. v. Director General*, as Agent, 231.

If carriers absorb switching charges for one shipper, they must do the like for all others similarly situated and entitled to like treatment. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (262).

Charges for switching ground limestone, during federal control, between plants within the city of Alton, Ill., increased under general order No. 28 and subsequently reduced. *Held*: Higher rate charged on shipments moving during interim found legally applicable and even if established in error, as contended by complainant, since no evidence offered to show that it was unreasonable, complaint dismissed. *Illinois Glass Co. v. Director General*, as Agent, 287.

Intraplant switching charges on shipments of coke moving during federal control from coke ovens to various points within the area of complainant's plant at Gary, Ind., found unreasonable where volume of movement was regular and heavy, the distance short, the service performed by engines and crews constantly on duty, and the charges were in excess of other charges for similar services in the same general territory. Reparation awarded on basis of lower charges subsequently established. *Illinois Steel Co. v. Director General*, as Agent, 349.

**SWITCHING—Continued.**

Rates on soft coal from mines near Springfield, Ill., to Springfield, during federal control, found unreasonable as compared with lower switching charges maintained by other carriers in the same general vicinity for similar services. Reparation awarded on basis of rate subsequently established. *Citizens Coal Mining Co. v. Director General, as Agent*, 695. Increased charges of the Leavenworth & Topeka R. R., for switching interstate shipments to and from team tracks at Leavenworth, Kana., found unreasonable to extent they exceed \$5 per car, but increased charges for switching interstate shipments between industries and connecting lines found justified as defendant's switching revenues do not afford more than a fair return on the value of the property devoted to the switching service over and above the cost of such service. *Leavenworth Chamber of Commerce v. Director General*, 697.

A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of unjust discrimination or undue prejudice. *Miller Paper Co. v. P. R. R. Co.*, 705 (706).

The Commission has repeatedly declined to require absorption of switching charges, except where necessary to remove unjust discrimination or undue prejudice, although in appropriate cases it may prescribe reasonable joint rates between points on switching and trunk lines. *Lafayette Gravel Co. v. C. & E. I. R. R. Co.*, 729 (782).

At the time of the adoption of Circular OS-31, governing method for ordering cars for mines, no consideration was given to the length of time the rules were to be made operative, although the fact that the roads were being operated as a unit under federal control was a prime reason for the adoption. *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 269 (274).

**TARIFF CIRCULAR 18-A.**

Rates on empty barrels from Carthage and Republic, Mo., to Westville, Okla., found unreasonable to extent it exceeded lower rate, applicable under Rule 77 of Tariff Circular 18-A, from Springfield and Joplin, Mo., from which Carthage and Republic are intermediate. No request made for establishment of lower rate prior to movement but usual practice of defendant is to maintain same rates on traffic from Carthage and Republic as from Springfield and Joplin. Reparation awarded. *West v. St. L.-S. F. Ry. Co.*, 45.

Rule 77 of Tariff Circular 18-A cited. *Weir Smelting Co. v. Director General, as Agent*, 118; *Pacific Coast Steel Co. v. Director General, as Agent*, 207 (208).

Where a mine is not actually upon the rails of a carrier and can not be considered as constructively upon the rails of that carrier under the terms of a trackage agreement, the publication of rates from that mine without the concurrence of the carrier upon whose rails it is situated is contrary to the Commission's tariff rules and should be discontinued. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (263-264).

Shipper made no request for establishment of lower rate to intermediate point under Rule 77 of Tariff Circular 18-A, as carrier accepted prepaid charges based on lower rate to farther distant point. Subsequently the same rate established to both points but consignee paid the difference between charges prepaid and those applicable and was reimbursed therefore by complainant. *Held*: Rate legally applicable found unreasonable to extent it exceeded lower rate subsequently established and reparation awarded. *De Jean v. Director General, as Agent*, 495.

**TARIFF INTERPRETATION.**

Original report, 55 I. C. C., 331, wherein intrastate shipments of silicate of soda moving during federal control were found misrouted and overcharged, overruled upon further hearing. Rates charged found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Boldt Paper Mills v. Director General*, as Agent, 471.

Whatever may have been the intention of the framers, a tariff is to be construed according to its terms. *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 669 (674).

**TARIFF SUPPLEMENT.** *See* SUPPLEMENT.

**TAXES.** *See* WAR TAX.

**TEMPORARY THROUGH ROUTES.** *See* THROUGH ROUTES.

**TERMINALS.**

Terminal conditions of the New England lines which make for high operating costs, discussed. *New England Divisions*, 513 (529).

Terminal service presents one of the greatest operating problems which now confront the railroads of the country. They should be more efficiently performed, and it may be that their costs are not adequately reflected in the rates. *Id.* (564).

Greater economies have been made in train operation than in terminal service. *Id.* (564).

**THROUGH AND LOCAL.**

Rate legally applicable on glass sand from Guion, Ark., to Augusta, Kans. found unreasonable and unlawful to extent it exceeded the aggregate of intermediate rates contemporaneously in effect. Departure from the provisions of the fourth section of the act was not protected by appropriate application or otherwise. Reparation awarded. *Odeil-Daly Material Co. v. Director General*, as Agent, 12.

Rate on baled straw from Oldenburg, Ill., to Rockport, Ind., exceeded the aggregate of intermediate rates to and from East St. Louis, Ill. Reparation awarded. *United Paperboard Co. (Inc.) v. S. Ry. Co.*, 60.

Through rate on imported nitrate of soda, in bags, from Norfolk, Va., to Carney's Point, N. J., exceeded the aggregate of intermediate rates to and from Philadelphia, Pa. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, 106.

Rate on sulphuric acid, in tank-car loads, from Denver, Colo., to Galena, Tex., exceeded the aggregate of intermediate rates to and beyond Houston, Tex. Reparation awarded. *Galena Signal Oil Co. v. Director General*, as Agent, 139.

Joint rates on lumber from certain points in the Carolinas and Virginia to Carney's Point, N. J., found unreasonable and unlawful to extent they exceeded the aggregate of intermediate rates via routes of movement to and beyond Pinners Point or Norfolk, Va. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 151.

Where combinations of interstate rates existed over routes of movement lower than through rates charged, such higher rates found unreasonable to extent they exceeded the lower combinations. Reparation awarded. *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 669 (674).

**THROUGH AND LOCAL—Continued.**

Rates applicable on ice from Carthage and Joplin, Mo., to Oklahoma City, Okla., which exceeded the aggregate of intermediate rates to and beyond Galena, Kans., not protected by appropriate application found unlawful. *Capital Ice & Storage Co. v. St. L.-S. F. Ry. Co.*, 677 (678).

**THROUGH ROUTES.**

Complaint praying for establishment of additional through routes to avoid a recurrence of delays and congestion experienced in the past via the established junction, denied where the shortest route and as prompt service afforded as can be obtained over any route under normal conditions. *Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co.*, 228.

That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. *Id.* (230).

**THROUGH ROUTES AND JOINT RATES.**

Routing of coke from Seaboard, N. J., to points on the New Haven railroad by way of Poughkeepsie, N. Y., found not unreasonable and request for establishment of through routes and joint rates on such traffic by way of New York harbor denied. Distance over the harbor route has little, if any, relation to distance over the Poughkeepsie route, difficulties encountered in moving traffic through the harbor and congestion at the terminals are manifest, and it was not shown that the movement by way of the harbor is more expeditious. *Seaboard By-Product Coke Co. v. Director General*, as Agent, 817 (321).

Prayer for establishment denied where not shown necessary or desirable in the public interest, and its establishment would replace a one-line movement by a joint-line haul involving the delay and expense of three terminal interchanges and force the originating carrier to short haul itself. *Phoenix Chamber of Commerce v. Director General*, as Agent, 368 (373-374); *Phoenix Chamber of Commerce v. Director General*, as Agent, 412 (416).

**TIDEWATER COAL.**

Following *Plymouth Coal Co.*, 56 I. C. C., 699, and other cases cited, rates on anthracite coal from points in the Lehigh and Wyoming regions of Pennsylvania to Jersey City, N. J., found unreasonable to extent they exceeded rates per long ton of \$1.45 on prepared sizes and \$1.35 on smaller sizes, prescribed in the *Anthracite Case*, 35 I. C. C., 220. Reparation awarded. *Wertheim Coal & Coke Co. v. L. V. R. R. Co.*, 211.

**TIONESTA VALLEY RAILWAY COMPANY.**

Found to be a common carrier subject to the act. *Tionesta Valley Ry.*, 473. History and description. *Id.* (474).

**TITLE.**

Demurrage charges assessed on order-notify shipments found not to have been unreasonable as complainant's title depended upon possession of the bills of lading properly indorsed, and defendant was justified in declining to accept disposition orders until the bills had been surrendered or other satisfactory assurance given. *Alpirt v. Director General*, as Agent, 486 (487).

**TON-MILE REVENUE.** *See also EARNINGS.*

Rates on canned condensed milk and pickles from Colorado producing points to Oklahoma found not unreasonable or unduly prejudicial; and on other canned goods from and to the same points found not unreasonable but unduly prejudicial to extent that they are upon a substantially higher basis, distance considered, than the rates on similar traffic to Kansas points; in other words, the ton-mile earnings under the rates to Kansas and Oklahoma should be substantially equal. Reasonable relationship prescribed for the future and reparation denied. *Oklahoma State Shippers' Assn. v. Director General*, as Agent, 433.

**TRACKAGE AGREEMENTS.**

Mines which are given a joint status by reason of their being served under trackage agreements are in the same category as junction-point mines, and any preference and advantage which such mines enjoy is not undue, as actual or constructive location upon two or more lines substantially differentiates their situation from that of local mines, situated on and served only by one railroad. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259; *Dering Mines Co. v. Director General*, 265.

The service of mines by a carrier under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (261); *Dering Mines Co. v. Director General*, 265 (267).

A trackage agreement might be the means of extending preferential treatment to one shipper to the undue prejudice of another. For instance, if a carrier extends its service by a trackage agreement to one mine on another line, it would be difficult, if not impossible, to justify a refusal to accord similar treatment to another intermediate competing mine located on the track over which it operates under the trackage agreement. *Ridge Coal Mining Co. v. M. P. R. R. Co.*, 259 (262).

Where a mine is not actually upon the rails of a carrier and can not be considered as constructively upon the rails of that carrier under the terms of a trackage agreement, the publication of rates from that mine without the concurrence of the carrier upon whose rails it is situated is contrary to the Commission's tariff rules and should be discontinued. *Id.* (263-264).

**TRACK GRAIN.**

Rules under which a reconignment charge was assessed on track grain held at Pittsburgh, Pa., for inspection and grading, while permitting reconignment without charge at Cleveland, Ohio, and other competitive points in central territory under like circumstances, found unreasonable and unduly prejudicial. Reparation awarded. *Pittsburgh Grain & Hay Exchange v. Director General*, as Agent, 506.

Described as grain held in cars for the purpose of official inspection and grading and thereupon reconsigned in the same cars to final destination, as distinguished from grain held in elevators. *Id.* (506).

**TRANSIT ARRANGEMENTS.****In General:**

Shipper contended that compliance with rules and regulations governing transit arrangements is burdensome and difficult but the mere fact that they may result in some inconvenience to shippers does not warrant a finding that they are unreasonable or otherwise unlawful. *Millsaps Cotton Co. v. Director General*, as Agent, 26.

A transit provision is an entirety, and must be accepted in its entirety or not at all. *Rumble & Wensel Co. v. Director General*, as Agent, 110 (111).

## TRANSIT ARRANGEMENTS—Continued.

**Compression:** Combination rates applicable to shipments of cotton from Marianna and Forrest City, Ark., cotton-compress points, to Helena, Ark., for compression and reshipment to New Orleans, La., and Boston, Mass., and points taking same rates, found not unreasonable with relation to the rates on like shipments from same points of origin compressed at Memphis, Tenn., and reshipped to same destinations. *Keese & Co. v. M. P. R. R. Co.*, 803.

**Concentration:** Local rates to and from concentrating point, assessed on shipments of cotton found not unreasonable, discriminatory, or unduly prejudicial where complainant failed to comply with tariff requirement which provided for surrender of inbound freight bills in order to obtain the benefit of through rate from point of origin to ultimate destination. *Rumble & Wensel Co. v. Director General*, as Agent, 110.

**Milling:** Proposed modification of rule governing rates to be applied on grain accorded transit at Chicago district stop-over points, by eliminating the words "or rate basing point" included in present tariffs as a result of error in compilation, found justified. *Transit Privileges on Grain*, 486.

## TRANSPORTATION.

Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish. *Atchison Ry. Co. v. United States*, 232 U. S., 199, 214. *Wyandotte Terminal R. R. Co.*, 1 (6).

Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. *Schlicher v. Director General*, 181 (187).

It is the right of carriers to perform any transportation service which it is their duty to perform, and in the absence of undue prejudice the Commission is without power to require them to make an allowance. *U. S. Cast Iron Pipe & Foundry Co. v. Director General*, as Agent, 839 (843-844).

## TRANSPORTATION CONDITIONS.

Rate on molding sand from Ottawa, Ill., to Chattanooga, Tenn., found not unreasonable or unduly prejudicial as compared with lower rate to Pittsburgh, Pa., Buffalo, N. Y., and other points in the same group, as the transportation conditions obtaining from and to these points are dissimilar. *Rock Products Traffic League v. C., B. & Q. R. R. Co.*, 105.

## TWO-LINE HAUL.

When distances of over 500 miles are involved the fact that the service is by two lines is largely negligible. *Hollingshead Co. v. Director General*, as Agent, 147 (149).

## UNDERCHARGES.

No opinion expressed upon question of liability for outstanding undercharges, a question determinable only by the court having jurisdiction and upon the facts in each case. *Conf. Ruling 314*. *American Smelting & Refining Co. v. Director General*, as Agent, 583 (589).

**UNREMUNERATIVE TRAFFIC.**

Short-haul l. c. l. traffic is generally conceded to be unremunerative, but it can not be said that because complainants originate a larger percentage of l. c. l. traffic than defendants, that fact should be given weight in determining that the divisions of complainants "as a whole" are unjust. *New England Divisions*, 518 (540).

**USE.**

Rates on scrap iron generally are understood to apply on scraps or pieces of steel or iron useful only for remelting. The phrase "value for remelting purposes only" defines the nature of the articles and does not make the rate to be applied dependent upon its use. *D'Arcy Spring Co. v. Director General*, as Agent.

Carriers can not maintain rates based upon the use to which a commodity is to be devoted. *Nagase & Co. v. Director General*, as Agent, 422 (425).

**VALUATION.**

Record plainly indicated that carrier greatly overcapitalized and afforded no tangible basis upon which alone to determine what should be the measure of a reasonable system of charges on the basis of the value of its property devoted to the public use. *Fares of the Washington-Virginia Ry. Co.*, 200 (208).

**VALUE.**

Rules and practices of American Ry. Express Co., whereunder shipments are refused unless the declared value thereof is marked on the package by the shipper found unlawful in the absence of proper provisions in schedules authorizing such action. *Viscose Co. v. American Ry. Express Co.*, 82.

Carriers reasonably may require shippers to properly mark their shipments and if shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose. (33-34.)

To require shippers to mark the value on packages, when shipments are subject to rates based on value, would seem to be in the interest of operating efficiency and not unreasonable, but if carriers desire to enforce such a regulation it should be plainly stated in its schedules and uniformly observed. *Id.* (34-35.)

**VENDOR AND VENDEE.**

In an action for damages due to refusal of carrier to construct a siding and switch connection at complainant's mine while granting the same to complainant's vendee, *Held*: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not the proximate result of the carrier's unlawful conduct. *Schlicher v. Director General*, 181 (185-186).

**VOLUME OF TRAFFIC.**

Low freight traffic density of New England lines as compared with eastern trunk line and central territory carriers. *New England Divisions*, 518 (529).

Reasonableness of commodity rates is not dependent solely upon regularity of movement. *Swift & Co. v. Director General*, as Agent, 618 (623).



